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LEGISLATION AIMED AT COMBATING INTERNATIONAL DRUG TRAFFICKING AND MONEY LAUNDERING

A STAFF REPORT

PREPARED FOR THE USE OF THE

SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

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SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

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FOREWORD

The Senate Caucus on International Narcotics Control is authorized and directed to "monitor and promote international compliance with narcotics control treaties" and to "encourage United States Government and private programs seeking to expand international cooperation against drug abuse and narcotics trafficking." In addition, the Caucus is charged with periodically reporting to the Senate on international narcotics control matters. This report was prepared to assist the Caucus in fulfilling these statutory responsibilities.

In response to the ever-increasing problem of international drug production and trafficking, Congress has passed numerous statutes aimed at stemming the flow of illicit drugs on the international market. These statutes range from a requirement that the Agency for International Development prioritize development programs that are linked to narcotics control efforts, to a forfeiture provision that allows for the sharing of proceeds with foreign governments who cooperate with the U.S. Government on law enforcement operations. Many of these statutes have important foreign policy ramifications, and they form the cornerstone of the U.S. Government's international narcotics control effort. A clear understanding of these statutes is essential in assessing the effectiveness of current U.S. narcotics control policy, as well as determining what additional steps could be taken to improve this policy.

This report, prepared by staff consultant Joseph A. Cari, Jr., provides an analysis of these statutes. This analysis, and the accompanying reference materials, should greatly assist the Caucus and the Senate in carrying out their important responsibilities in the area of international narcotics control.

JOSEPH R. BIDEN, Jr., *Chairman.*

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LEGISLATION AIMED AT COMBATING INTERNATIONAL DRUG TRAFFICKING AND MONEY LAUNDERING

I. INTRODUCTION

The thrust of recent legislative action aimed at international crime has focused on drug trafficking and money laundering. Going hand in hand with efforts to combat these types of international crime has been both legislative and executive attempts to increase international cooperation in gathering evidence against and prosecuting those involved in such international criminal activity. This report provides an overview of recent legislation aimed at combating international crime, as well as executive action in the form of recently negotiated and ratified mutual legal assistance treaties. This report will also address what further steps might be taken to ameliorate problems related to international crime.

A. The International Crime Problem

The President's Commission on Organized Crime found drug trafficking to be the most serious crime problem in the world today. The illicit production, trafficking and abuse of drugs is international in scope, and results in violence, corruption and even, in some cases, political instability in major source countries.[1]

Money laundering is another international problem which is closely related to drug trafficking. Laundering schemes provide the conduits for financing narcotics ventures, as well as conceal the source of narcodollars to make them appear legitimate.[2] While it has been recognized for some time that a collateral attack on the proceeds of narcotics trafficking is an effective way to hinder trafficking itself, efforts to uncover money laundering schemes have not always been successful. Many foreign governments historically have been less than cooperative with the attempts of United States law enforcement officials to trace funds into foreign banks.[3] Many countries are protective of their status as tax shelters, and allow bank secrecy laws to hinder efforts of law enforcement to trace funds in their banks.[4]

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[1] President's Commission on Organized Crime, "America's Habit: Drug Abuse, Drug Trafficking and Organized Crime," (March 1968) at 1 (hereinafter cited as Commission on Organized Crime (1986)).

[2] U.S. Department of International Narcotics Matters, "International Narcotics Control Strategy Report" (March 1987) at 341. (hereinafter cited as Narcotics Control Report).

[3] *Id.* at 350-351.

[4] For an in-depth discussion of the law enforcement problems creeated by bank secrecy laws in foreign jurisdictions, *see* Weiland, "Congress and the Transnational Crime Problem", 20 *Int'l Law* 1025, 1026-1033 (Summer 1986).

B. Legislative and Executive Action Aimed at Combating International Crime

The following legislation directed at narcotics trafficking and money laundering is reviewed in this report:

1. Legislation Aimed at the Elimination of International Drug Production and Trafficking—
   a. Foreign Assistance Act of 1971, P.L. 92-226, Part I, Section 109, 86 Stat. 20.
   b. Trade Act of 1974, P.L. 93-618, Title V, 88 Stat. 1978.
   c. International Development Cooperation Act of 1979, P.L. 96-53, Section 110, 93 Stat. 359, 363.
   d. Caribbean Basin Economic Recovery Act, P.L. 98-67, Title II, Subtitle A, 97 Stat. 384.
   e. International Narcotics Control Act of 1985, P.L. 99-83, Title VI, 99 Stat. 190, 228.
   f. Narcotics Control Trade Act, P.L. 99-570, Title IX, 100 Stat. 3207-164.
   g. International Narcotics Control Act of 1986, P.L. 99-570, Title II, 100 Stat. 3207-60.
   h. National Drug Interdiction Improvement Act of 1986, P.L. 99-570, Title III, 100 Stat. 3207-73.
2. Legislation Aimed at Laundering of Drug-Related Proceeds and Penetrating Foreign Bank Secrecy—
   a. Currency and Foreign Transactions Reporting Act, P.L. 91-508, Title II, 84 Stat. 1305.
   b. Caribbean Basin Economic Recovery Act, P.L. 98-67, Title II, Subtitle B, 97 Stat. 395.
   c. Comprehensive Crime Control Act of 1984, P.L. 98-473, Title II, Chap. IX, 98 Stat. 2135.
   d. International Narcotics Control Act of 1985, P.L. 99-83, Title VI, Section 619, 99 Stat. 190, 228.
   e. Money Laundering Control Act of 1986, P.L. 99-570, Title I, Subtitle H, 100 Stat. 3207-18.
   f. Narcotics Control Trade Act of 1986, P.L. 99-570, Title IX, 100 Stat. 5217.
   g. International Narcotics Control Act of 1986, P.L. 99-570, Title II, Section 2005, 100 Stat. 3207-16.

In addition, several mutual legal assistance treaties will be discussed as examples of treaties intended to aid the efforts of States law enforcement officials to trace money laundering through the cooperation of foreign governments.

II. LEGISLATIVE EFFORTS TO HALT INTERNATIONAL DRUG PRODUCTION AND TRAFFICKING

A. The Foreign Assistance Act of 1971

Over 15 years ago, Congress pinpointed the elimination of narcotics trafficking as a high priority item of U.S. foreign policy.[5] After recognizing the problem, Congress proposed a solution—tying foreign assistance to a country's efforts to control the illegal flow of

[5] S. Rep. No. 432, 92nd Cong., 2d Sess.

narcotics into the United States.[6] The resulting provision: (1) authorized the President to enter into agreements with other countries to facilitate control of the production, transportation and distribution of narcotics; and (2) authorized the President to provide assistance to any country or international organization for the control of the production, transportation and distribution of narcotics. The provision further required the President to suspend all economic and military assistance if he determined that any country had failed to take adequate steps to prevent controlled substances produced or processed in, or transported through, the country from entering the United States.[7]

This section was amended in 1983 [8] to require the President to submit a comprehensive annual report which provides a detailed report on narcotics production and trafficking in each country which is a significant source of narcotics entering the United States. The report must provide a description of assistance to that country and its impact on narcotics trafficking in that country. The report must also provide a description of the plans, and the adequacy of law enforcement measures taken by such countries, for the progressive elimination of illicit narcotics cultivation. The President is also required, under this amendment, to make an annual determination of the maximum reduction in illicit drug production achievable by each major illicit drug-producing country receiving economic assistance from the United States.[9]

If the President determines that a major illicit drug producing country has failed to take adequate steps to prevent controlled substances produced or processed in, or transported through, that country from being smuggled into the United States, the President is required to suspend assistance to that country, and the multinational banks must be instructed to vote against loans to that country. In determining whether adequate steps have been taken, the President shall give consideration to whether the government of that country has achieved the maximum reductions in illicit drug production which were determined to be achievable.[10]

B. The Trade Act of 1974

The Trade Act of 1974 [11] also contained a provision aimed at eliminating narcotics trafficking. This Act authorized the President to provide duty free treatment to developing countries in order to assist the economic development of such countries. No country, however, could be designated to receive trade benefits if it did not take adequate steps to cooperate with the United States to prevent narcotic drugs produced or processed in, or transported through such country from unlawfully entering the United States.[12] This

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[6] *Id* at 1884.

[7] Foreign Assistance Act of 1971, Pub. L. No. 92-226, § 109, 86 Stat. 20. Interestingly, the Senate bill had required an annual determination *prior to furnishing assistance* that the country had taken adequate steps to control illicit drug production and distribution. The Senate receded from its position and the House bill was enacted. Cong. Rep. No. 590, 92nd Cong., 2d Sess. It was not until the passage of the International Narcotics Control Act of 1986 that such stringent legislation was passed.

[8] Pub. L. No. 98-164, § 1003, 97 Stat. 1053.

[9] H.R. Rep. No. 563, 98th Cong., 1st Sess. (1983).

[10] Pub. L. No. 98-164, § 1003, 97 Stat. 1053.

[11] 19 U.S.C. § 2461, *et seq.*

[12] 19 U.S.C. § 2462(b)(5).

restriction was subject to waiver upon the President's determination that, despite the failure of a country to cooperate with U.S. efforts to prevent drug smuggling, designation of such country to receive trade benefits was in the economic interest of the United States.

C. The International Development Cooperation Act of 1979

In Section 110 of the International Development Cooperation Act of 1979, Congress recognized the relationship between illicit narcotics cultivation and overall development problems: "The success of any effort to eliminate illicit narcotics production depends upon the availability of alternative economic opportunities. . . ." In response, Congress urged responsible agencies to give priority consideration to programs which stimulate broader development opportunities.

D. The Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act [13] also tied trade benefits to efforts to combat unlawful drug trafficking. The Act was limited to countries in the Caribbean Basin and Latin America [14] presumably since these countries required economic assistance, and often served as the source of, and conduit for, the smuggling of controlled substances into the United States.[15]

The Act authorized the President to proclaim duty-free treatment for certain articles produced by these countries. The Act, however, prohibited the designation for receipt of these trade benefits by any country that failed to take adequate steps to cooperate with the United States to prevent the illegal entry into the United States of narcotics produced or processed in, or transported through such country.[16] Further, before the President could extend these trade benefits, a county had to be a signatory to some treaty or agreement regarding the extradition of U.S. citizens,[17] an important aid to the United States in prosecuting U.S. citizens residing in foreign countries.[18]

The Act sets forth several other bases for the denial of trade benefits to the specified countries, including the seizure of property owned by a U.S. citizen, the repudiation of contracts made with a U.S. citizen, or the failure to act in good faith in recognizing as binding or enforceable arbitration awards in favor of U.S. citizens.[19] Many of these other bases, however, are subject to waiver, so that trade benefits may still be granted to countries violating these restrictions if the President determines that it is in the economic or security interest of the United States to designate the country to receive trade benefits. No such waiver is allowed, how-

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[13] 19 U.S.C. § 2701 *et seq.*

[14] *See* countries listed in 19 U.S.C. § 2702(b).

[15] The House bill contained no provision tying trade benefits to cooperation with attempts to prevent drug smuggling. Only the Senate bill contained such a provision and the conference committee included it in the final bill. There was no Senate report published, so the reasons for the inclusion of this provision can only be assumed. H.R. Rep. No. 325, 98th Cong., *1st* Sess.

[16] 19 U.S.C. § 2702(b)(6).

[17] 19 U.S.C. § 2702(b)(7).

[18] H.R. Rep. No. 266, 98th Cong., 1st Sess.

[19] 19 U.S.C. § 2702(b) (1), (3).

ever, if the country does not cooperate with the prevention of narcotics smuggling into the United States or does not enter into an extradition agreement.[20]

E. The International Narcotics Control Act of 1985

The International Narcotics Control Act of 1985[21] made several important changes in the Foreign Assistance Act of 1961 relating to control of narcotics smuggling. First, it amended the Foreign Assistance Act of 1961 to allow the presence of United States officers and employees during anti-narcotics police actions in a foreign country, to the extent that the Secretary of State and the government of that country agreed to it, and the Congress was so informed.[22]

Second, the Act targeted certain countries in which the production of, and trafficking in, controlled substances was perceived to be a particular problem. Stemming production and traffic of marijuana from Jamaica was a major concern, since at the time Jamaica supplied an estimated ten to twenty percent of the American market.[23] The Act required the President to give "major consideration" to whether the Jamaican Government had committed itself to a comprehensive plan for the control and reduction of the illicit cultivation, production and distribution of marijuana within a specified timeframe prior to providing economic assistance.[24]

Another country targeted by the Act was Bolivia, a major cocaine-producing country. The cocaine problem in Bolivia is exacerbated by the fact that Bolivia law does not prohibit coca cultivation.[25] The Act provided that 50 percent of economic and military assistance to Bolivia for fiscal year 1986 could be provided only after the President certified to Congress that the Bolivian Government had enacted legislation to (1) establish its legal coca requirements, (2) provide for the licensing of the number of hectares necessary to produce the legal requirement, and (3) make unlicensed coca production illegal. The other 50 percent of economic and military aid could be provided if the President certified to Congress that Bolivia had achieved the eradication targets established for calendar year 1985.

For fiscal year 1987, no assistance can be provided to Bolivia until the President certifies to Congress that the Government of Bolivia has developed a plan to eliminate illicit narcotics production and is prepared to enter into an agreement with the United States to implement that plan. After such certification, and after certification by the President that Bolivia has achieved at least half of the agreed upon eradication target for calendar year 1986,

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[20] 19 U.S.C. § 2702(b).

[21] Pub. L. No. 99-83, § 601 *et seq.*, 99 Stat. 228.

[22] Pub. L. No. 99-83, § 605.

[23] Nadelmann, "Criminal Law Assistance Treaties", 33 *Am. J. of Comp. L.* 467, 497 (Summer 1985).

[24] Pub. L. No. 99-83, Section 610, 99 Stat. 230. It is encouraging to note that the Jamaican Government has recently launched the largest campaign ever mounted in that country to eliminate narcotics trafficking. During 1986, the Jamaican Government made significant progress in the eradication and seizure of marijuana, and in arrests for narcotics offenses (Narcotics Control Report at 191, 193-195). In December 1986, the Jamaican Prime Minister announced the decision to begin an herbicidal eradication program, a decision intended to demonstrate a commitment to narcotics control (*Id.* at 193, 203).

[25] Narcotics Control Report at 67-68.

50 percent of the aid allocated to Bolivia can be provided. The other 50 percent can be provided upon Bolivia's achievement of its eradication target for 1986.[26]

There was some progress made in the war on coca production in Bolivia in 1986. The Bolivian Government made a politically high-risk decision to request and accept the arrival of U.S. helicopters and troops in July 1986 in Operation Blast Furnace. The operation attacked cocaine labs that the Bolivian strike forces did not have the capability to attack. The result was a virtual shutdown of cocaine production in Bolivia during August, September, and October. The value of coca dropped fifteeen fold to far below the production cost. The operation demonstrated that effective interdiction can render the growing of coca financially unattractive.[27]

In addition, the Government of Bolivia has formulated a comprehensive 3-year narcotics control plan. This plan is based upon (1) effective interdiction, (2) the passage of a law outlawing all but "traditional" coca production, and (3) a 12-month period of voluntary eradication followed by forced eradication. U.S. officials are currently negotiating with Bolivia to arrange implementation of this plan.[28]

Peru, the largest producer in the world,[29] was also a target of this Act. Foreign aid could be provided to Peru in fiscal year 1986 only upon certification by the President that the Government of Peru had made substantial progress in developing a plan to (1) establish legal coca requirements, (2) license the number of hectares necessary to meet the legal requirement, and (3) eliminate unlicensed coca production. The fiscal year 1987 aid was made contingent upon a report to Congress that such a plan has been developed and was being implemented.[30] The Government of Peru is currently refining a comprehensive narcotics control plan which responds to this section of the Act.[31]

The Act also notes the serious problem of Cuban drug trafficking.[32] Cuba is situated along some of the primary drug routes into the Untied States. It is believed that Cuba allows drug trafficking through its air space and its waters. It is also believed that the Cuban Government sanctions narcotics trafficking as a means to finance subversion of Latin American governments friendly to the United States.[33] Congress unfortunately has no easily available weapon, such as withholding of foreign aid, to prevent Cuban cooperation in drug trafficking. At this point, the act only requests that the President take whatever steps are necessary to put this problem before an international forum.[34]

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[26] Pub. L. No. 99-83, § 611, 99 Stat. 230.
[27] Narcotics Control Report at 69-70.
[28] *Id.* at 67.
[29] *Id.* at 68.
[30] Pub. L. No. 99-83, § 612(a), 99 Stat. 231.
[31] Narcotics Control Report at 116.
[32] Pub. L. No. 99-83, § 617, 99 Stat. 232.
[33] Commission on Organized Crime (1986) at 172-173.
[34] Pub. L. No. 99-83, § 617(b).

F. Narcotics Control Trade Act

The Second Session of the 99th Congress resulted in the comprehensive Anti-Drug Abuse Act of 1986. This legislation contained many provisions aimed at combatting international drug trafficking. The Narcotics Control Trade Act[35] a part of this legislation, amends the Trade Act of 1974 and the Caribbean Basin Economic Recovery Act. The amendment requires the President to certify to the Congress that each country given trade benefits under the Trade Act of 1974 and the Caribbean Basin Economic Recovery Act has cooperated fully during the previous year with the United States, or has taken adequate steps on its own, to prevent controlled substances produced or processed in, or transported through, such country from beingn transported into the United States. If the President cannot make such certification he is required, to the extent necessary, to achieve the purposes of the Act to enforce the following sanctions:

(1) deny preferential tariff treatment to all of the products of that country;

(2) apply an additional duty to any or all dutiable products of that country, not to exceed 50 percent ad valorem; and/or

(3) apply a duty to any duty-free products of that country, not to exceed 50 percent ad valorem.[36]

This Act is the most stringent trade legislation thus far enacted, as it denies a country all preferential tariffs and threatens trade sanctions unless it can be determined that such a country is taking steps to the maximum extent possible to eradicate illicit drug cultivation and distribution.

G. The International Narcotics Control Act of 1986

The International Narcotics Control Act of 1986[37] built on the success of the International Narcotics Control Act of 1985 in employing the withholding of economic assistance to encourage foreign governments to eradicate illicit drug cultivation and processing within their borders, and to prevent the shipment of such drugs to the United States. In fact, the House of Representatives Committee on Foreign Affairs noted that the threat of foreign aid sanctions led to Bolivia's first cocaine eradication effort.[38] The purpose of this Act was to promote international cooperation in the elimination of narcotics production and trafficking through the continued use of foreign aid sanctions and any other available means.[39]

The Act made more emphatic the linkage between foreign assistance and narcotics control. Unlike the International Narcotics Control Act of 1985, this Act does not limit its threat of foreign aid sanctions to those select countries which are the major sources of narcotics production. Rather, section 2005 of the Act requires that 50 percent of assistance allocated to every major illicit drug production country or major drug transit country be withheld until the President determines and certifies to Congress that, during the

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[35] Pub. L. No. 99-570, § 9001 *et seq.*
[36] *Id.*
[37] Pub. L. No., 99-570, § 2001 *et seq.*, 100 Stat. 5113.
[38] H.R. Rep. No. 798, 99th Cong., 2d Sess. (1986) at 4.
[39] *Id.*

previous year, the country has cooperated fully with the United States, or has taken adequate steps n its own, to prevent narcotics produced or procesed in or transported through, such country from being transported to the United States. As with the Narcotics Control Trade Act, the certification must consider whether the government of a country has made the maximum effort to eradicate illicit drug production and trafficking. Alternatively, the President may certify countries that would not otherwise qualify, on the grounds that the national interest of the United States require foreign assistance to such countries. The President's certifications are subject to disapproval, by vote of both Houses, within 30 days.[40]

In addition to the provisions of Section 2005, the Act specifies further what measures are to be taken in dealing with countries that the President cannot certify as having cooperated fully with narcotics control efforts. Section 2013 provides that the President must submit to Congress every 6 months a report lising each major drug producing and drug transit country:

1. which, as a matter of government policy, encourages or facilitates the production or distribution of illicit drugs;

2. in which any senior government official engages in, encourages, or facilitates the production or distribution of, illicit drugs;

3. which, after being requested to do so by the United States, fails to cooperate with lawful activities of United States drug enforcement agents; or

4. in which any United States drug enforcement agent has suffered or been threatened with violence.

No United States assistance may be furnished to any country identified in this report, and the United States will oppose new or extended loans to such countries by the multilateral development banks.

The Act also built on the success of the International Narcotics Control Act of 1985 in using foreign aid sanctions to achieve action by a targeted country. Section 601 of the Act withholds $1,000,000 of funds allocated to Mexico for narcotics control aid in fiscal year 1987 until the President certifies that the Mexican Government has fully investigated the 1985 murders of DEA agent Enrique Camarena Salazar and his pilot Alfredo Zavala Avelar, and the 1986 detention and torture of DEA agent Victor Cortez, Jr., and has brought to trial and effectively prosecuted those responsible. The President also is authorized to consider the following actions to encourage a full investigation of these crimes: [41]

1. imposition of a mandatory travel advisory for all of Mexico;

2. restrictions on foreign assistance;

3. denial of favorable tariff treatments; and

4. denial of favorable votes in multilateral development banks.

The failure of the Mexican Government to fully and promptly investigate these murders and torture were of particular concern to

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[40] Pub. L. No. 99-570, § 2005(a).
[41] Pub. L. No. 99-570, § 2030, 100 Stat. 5125.

Congress, lest such terrorist acts become commonplace and frustrate U.S. drug enforcement efforts in Mexico.[42]

The Act also contains a specific provision for Bolivia. Due to the success of Operation Blast Furnace, and the Bolivian Government's cooperation with U.S. efforts to eradicate cocaine production and trafficking in Bolivia in response to the threat of foreign aid sanctions, restrictions for the provision of foreign assistance to Bolivia were eased somewhat. The requirements of the International Narcotics Control Act of 1985 for economic assistance for fiscal year 1987 were revised. Up to 50 percent of the assistance allocated to Bolivia can be provided upon certification by the President that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia, or has cooperated with the United States in such operations. The remaining amount of assistance may be provided at any time after certification that Bolivia has met certain eradication targets in 1986, or has entered into an agreement with the United States to implement a plan for substantial eradication in 1987.[43]

The Act contained several provisions aimed at increasing international cooperation in the prosecution of narcotics traffickers. Section 2011 of the Act notes a continuing need for a comprehensive information system on all drug arrests of foreign nationals in the United States. Although, pursuant to the Foreign Relations Authorization Act,[44] the executive branch was ordered to establish such a system to permit information sharing on foreign drug traffickers and to ensure that such persons are denied visas to enter the United States, no such system had yet been established at the time this Act was under consideration. As such a system was felt to be important, this Act again urged the executive branch in Section 2011 to expeditiously develop such a system.[45]

Sections 2002 through 2004 of the Act make additional aircraft available to foreign countries for narcotics control and provide funding for training in maintenance and operation of such aircraft. The majority of this funding is earmarked for Latin America, with the intent that the strengthening of regional forces there will eventually obviate the need for commitment of U.S. military personnel overseas.[46]

Section 2008 requires the annual narcotics control reports issued by the Department of State to include a discussion of the extent to which foreign countries cooperate with the United States through the extradition or prosecution of drug traffickers, and where appropriate, a discussion of the status of negotiations on new or updated extradition treaties. This provision reflects congressional concern over the inability of many countries, particularly those in Latin America, to effectively prosecute major drug traffickers, or alternatively to extradite them to the United States. The importance of extradition as a weapon in narcotics control was made clear by the February 1987 arrest and extradition of Colombia cocaine industry

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[42] H.R. Rep. No. 798 at 15–16.
[43] Pub. L. No. 99-570, § 2012, 100 Stat. 5118.
[44] Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, § 132, 99 Stat. 405, 420.
[45] H.R. Rep. No. 798 at 10.
[46] *Id.* at 5–6.

leader Carlos Lender.[47] The Secretary of State is urged to continue to update existing extradition treaties or negotiate new ones, to prevent major drug traffickers from escaping prosecution.[48]

Section 2009 of the Act broadens the ability of United States law enforcement personnel to be present at foreign narcotics raids under the Foreign Assistance Act of 1961. The International Narcotics Control Act of 1985, as discussed above, allowed such participation for the first time where the Secretary of State and the government of that country had agreed to it.[49] This amendment proved to be unworkable, since most countries refused to enter into such agreements publicly. In addition, some governments were willing to permit such activities only on a case-by-case basis.[50]

Thus, the 1986 amendment allows the presence of U.S. officials at foreign narcotics raids where the Secretary of State determines it would be in the national interest of the United States and would not be harmful to U.S. relations with that country. Further, United States law enforcement officials may assist foreign officers who are effecting an arrest.[51]

One significant omission from this Act is any mention of the Cuban problem, which was a concern of the International Narcotics Control Act of 1985, as discussed above. Cuban tolerance of narcotics trafficking through its air space and aid to maritime smuggling remains a problem, as the country is situated along the primary illicit drug smuggling routes into the United States.[52]

H. The National Drug Interdiction Improvement Act of 1986 and the National Antidrug Reorganization and Coordination Act

The Anti-Drug Abuse Act of 1986 contains two titles relating to the interdiction of illicit drugs: the National Drug Interdiction Improvement Act of 1986[53] and the National Anti-Drug Reorganization and Coordination Act.[54]

Interdiction is the effort to intercept or deter the shipment of illegal drugs from foreign countries to the United States. Interdiction focuses on drugs in transit to the U.S. border, including both those shipments concealed in legitimate commerce that seek to pass through ports of entry and those that attempt to penetrate the border surreptitiously in private aircraft, boats and land vehicles or carried by persons on foot.[55] There are several Federal agencies which have responsibility for drug interdiction. The Coast Guard and the Customs Service have primary responsibility for border interdiction. The Coast Guard focuses on identification and interdiction of maritime drug smuggling, principally by private sea-

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[47] Narcotics Control Report at 359.
[48] H.R. Rep. No. 798 at 8.
[49] Pub. L. No. 99-83, § 605, 99 Stat. 441.
[50] H.R. Rep. No. 798 at 9-10.
[51] *Id.*
[52] Narcotics Control Report at 15.
[53] Pub. L. No. 99-570, § 3001 *et seq.*, 100 Stat. 5126.
[54] Pub. L. No. 99-570, § 7001 *et seq.*, 100 Stat. 5213. While this title is not addressed solely to interdiction, it is clear that one of the problems this title is meant to address is lack of coordination among agencies responsible for interdiction.
[55] U.S. Congress, Office of Technology Assessment, "The Border War on Drugs", OTA-0-336 (March 1987) at 1 (hereinafter cited as Office of Technology Assessment).

going vessels. The Coast Guard focuses major drug law enforcement efforts on the open seas, although it also conducts patrols and makes seizures near the shore where it has concurrent jurisdiction with the Customs Service.[56] The Customs Service has primary interdiction responsibility for drugs smuggled through official ports of entry and by general aviation, and has concurrent jurisdiction with the Coast Guard in coastal waters up to 12 miles offshore.[57]

The Drug Enforcement Agency also has a major drug interdiction role. The DEA is primarily responsible for investigating drug-related operations and for collecting drug-related intelligence information. Its responsibilities related to border interdiction include gathering, analyzing, and providing intelligence, and investigating the drug smugglers once caught.[58] The focus of the DEA is different from that of the Coast Guard and Customs Service: the DEA focuses on convictions rather than immediate interdictions. For example, the DEA may sometimes allow shipments to enter the country so that it can follow their movement and obtain evidence against the leaders of the drug smuggling organizations. These differing goals can create conflicts between the activities of the DEA and the border interdiction agencies.[59]

There are still other Federal agencies which have a role in drug interdiction. The Border Patrol has no specific statutory authority for interdiction, but often intercepts drugs and smugglers in the course of performing its normal duties.[60] The Department of Defense provides support to the Coast Guard and Customs Service by sharing intelligence, providing aircraft and equipment, and assisting in certain seizure operations. DOD aircraft fly regular surveillance missions to detect potential smugglers, and Navy ships often carry Coast Guard Tactical Law Enforcement Teams to board suspect vessels.[61]

For several years, critics have maintained that the fragmentation of interdiction responsibility and lack of coordination among all these agencies, has seriously hindered Federal drug interdiction efforts.[62] In March 1986, the President's Commission on Organized Crime also reported that "the single most important need in the interdiction field is leadership."[63] According to the Commission, the National Drug Enforcement Policy Board failed to assert a clear leadership role.[64] Furthermore, a March, 1987 report by the Office of Technology Assessment found this lack of coordination to still be a serious problem. This study found that Federal drug interdiction efforts suffer from a lack of clear direction, and that fragmented jurisdictional responsibilities are a major impediment to improving interdiction activities.[65]

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[56] *Id.* at 34.
[57] *Id.* at 35.
[58] *Id.* at 33.
[59] *Id.*
[60] *Id. at 37.*
[61] *Id. at 38.*
[62] Comptroller General's Report to the Congress of the United States, "Federal Drug Interdiction Efforts Need Strong Central Oversight", GAO/GGD-83-52 (June 13, 1983) (hereinafter cited as Comptroller General's Report).
[63] Commission on Organized Crime (March 1986) at 364.
[64] *Id.* at 333.
[65] Office of Technology Assessment at 51-52.

The Anti-Drug Abuse Act of 1986 does not go far enough to address this problem. In fact, the National Drug Interdiction Improvement Act of 1986 may exacerbate the problem by contributing to the overlapping jurisdiction of the various Federal agencies with interdiction responsibilities. The major provisions of this Act are as follows:

1. It appropriates funds to DOD for the enhancement of drug interdiction. These funds are to provide aircraft and helicopters to the Coast Guard and Customs Service for interdiction purposes.

2. It authorizes the assignment of additional Coast Guard personnel to active duty on Navy ships.

3. It authorizes the study by DOD of how it can further aid the civilian law enforcement agencies' interdiction efforts, including improved surveillance and intelligence.[66]

4. It significantly increases the manpower and equipment of the Customs Service.[67]

5. It gives the Customs Service an increased ability to control aviation smuggling by means of new anti-air smuggling provisions which penalize the recent phenomenon of air drops of contraband to vessels in international waters.[68]

6. It revises the customs laws to require immediate reporting to the Customs Service of the arrival of vessels from foreign waters. Prior law only required reporting within 24 hours. The law now allows the Customs Service to concentrate its enforcement activities on conveyances failing to report immediately on the assumption that they are likely to be involved in smuggling.[69]

The Act was intended to respond to the perceived serious problem of illegal drug smuggling. Congress believed that interdiction efforts were suffering due to a lack of resources, so the main focus of the Act was to increase resources for interdiction.[70] This response was not a cure-all, however, since the chief handicap to Federal interdiction efforts—lack of coordination among the various agencies responsible for interdiction—remains unresolved. The dissenting views of Representative Philip M. Crane highlight the possible weaknesses of this legislation:

> Coordination and cooperation among the various agencies responsible for drug interdiction is essential in addressing the drug problem effectively, and the Committee made no real effort to encourage this. Establishing similar functions in various agencies, which compete for scarce budgetary resources, will only cripple our collective effort.
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> For example, the Air Force already is establishing a drug interdiction "air wing" to provide surveillance and detection assistance to drug enforcement authorities. Increasing the authorization for the Customs Services air

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[66] Pub. L. No. 99-570, §§ 3052, 3057, 100 Stat. 5127, 5130.
[67] H.R. Rep. No. 794, 99th Cong., 2d Sess. (1986) at 1, 3.
[68] U.S. Department of Justice, Criminal Division, *Handbook on the Anti-Drug Abuse Act of 1986*, 115 (March 1987) (hereinafter cited as *Justice Dept. Handbook*).
[69] *Justice Dept. Handbook* at 115-116.
[70] H.R. Rep. No. 794, at 1-2.

program without taking into account existing resources and equipment under the control of DOD and other law enforcement agencies is not appropriate or even sensible during these times of huge budget deficits.[71]

While the National Drug Interdiction Improvement Act of 1986 does not address this coordination problem, some attempt to do so is made by the National Anti-Drug Reorganization and Coordination Act. This Act acknowledges that Federal responsibility for combating drug trafficking is divided among many agencies and bureaus and that this presents an obstacle to efficiently combating drug trafficking. The Act proposes no specific solution to the problem, but instead requires the President to prepare a plan to reorganize the executive branch to more effectively combat drug trafficking and abuse.[72]

Although the President has not yet made such proposal, the Senate has recently proposed Senate Bill S. 789, which would provide a framework to pursue a coordinated national and international narcotics control policy.[73] This bill would establish an office called the Office of the Director of National Drug Control Policy. There would be two deputy directors—one in charge of demand reduction and the other in charge of drug law enforcement, including border interdiction. One of the purposes of this Office would be to direct and coordinate government efforts to halt the importation and distribution of illicit drugs in the United States. The National Drug Enforcement Policy Board would be terminated.

III. LEGISLATIVE AND EXECUTIVE ACTION RELATING TO MONEY LAUNDERING AND FOREIGN BANK SECRECY

Money laundering is the process of changing money gained from illegal operations into a manageable form while concealing its illicit origins.[74] Narcotics trafficking creates the largest demand for money laundering, but organized crime activities such as gambling and loan sharking [75] also create a demand.

Money laundering schemes frequently involve the use of international financial channels. The President's Commission on Organized Crime estimated that $5 to $15 billion of money representing proceeds of illegal activities moves into international financial channels each year. Probably more than two-thirds of this money passes through Colombia or the Carribean offshore banking centers.[76] This money is moved overseas in four ways:

1. Money is physically carried overseas;
2. Money is deposited in United States banks and wired overseas;
3. Financial instruments such as cashiers checks or bearer bonds are physically carried overseas; and

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[71] *Id.* at 30.
[72] Pub. L. No. 99-570, § 7002, 100 Stat. 5213.
[73] S. 789, 100th Cong., 1st Sess. (1987).
[74] Narcotics Control Report at 343.
[75] President's Commission on Organized Crime, "The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering" (October 1984) at 7.
[76] *Id.* at 13.

4. The Money is moved overseas by means of non-financial movements that resemble legitimate transactions (i.e., burning goods and shipping them abroad for resale).[77]

Once the funds are abroad, they may be moved through secret bank accounts, trusts or shell corporations to further conceal their illicit origins.[78]

Clearly drug trafficking would be considerably reduced if there were no money laundering.[79] Until recently, however, the tools available for combating money laundering were inadequate.

A. The Bank Secrecy Act

Until the advent of recent legislation, the primary tool available to fight money laundering was the Bank Secrecy Act.[80] This Act required banks and other financial institutions to file a currency transaction report whenever a cash transaction involved greater than $10,000. This reporting requirement did not apply to wire transfers, bank checks, or written transfer orders in excess of $10,000. This Act also required the filing of a Currency or Monetary Instruments Report with the Custom Service whenever cash or monetary instruments greater than $10,000 is taken out of the United States. No such report was required for cashier's checks or bearer bonds made out to cash. The Act also required a Foreign Bank Account report to be filed whenever a person has an account in a foreign bank of more than $10,000 in value.[81]

One obstacle to effective enforcement of the provision of the Bank Secrecy Act was that many banks were reluctant to come forward with the necessary information for fear of liability under state law.[82] Further, some institutions were providing the necessary information, but were also notifying their customers of the pendency of investigations against them under the Right to Financial Privacy Act,[83] thus hindering the investigation.[84]

Another problem with the Bank Secrecy Act is that the courts have been reluctant to apply the reporting requirements to customers as well as banks. Thus, customers who intentionally structured transactions in order to avoid the reporting requirements could not be prosecuted under the Bank Secrecy Act.[85]

In addition, this Act could not resolve the diplomatic issues of tracing funds in foreign banks, which tracing requires the cooperation of foreign governments. There are many governments that prefer to protect their status as offshore tax havens, rather than cooperate with U.S. law enforcement efforts in tracing funds moved overseas.[86] In the recent past, congressional and executive activity

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[77] Narcotics Control Report at 344-345.
[78] *Id.* at 345.
[79] Commisson on Organized Crime (1986) at 409.
[80] Currency and Foreign Transactions Reporting Act, Pub. L. No. 91-508, Title II, 84 Stat. 1305, *as amended by* Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Title II, Chap. IX, 98 Stat. 2135, codified as 31 U.S.C. *et seq.* (hereinafter the "Bank Secrecy Act").
[81] 31 U.S.C. § 5316.
[82] H. Rep. No. 433, 99th Cong., 2d Sess. at 3.
[83] 12 U.S.C. § 3401 *et seq.*
[84] H. Rep. No. 433 at 17.
[85] *Id.* at 3, 21-22.
[86] Narcotics Control Report at 351.

has been directed to overcoming these problems by means of both the passage of new legislation and the negotiation of mutual legal assistance treaties with foreign governments.

B. The Caribbean Basin Economic Recovery Act

Subtitle B of the Caribbean Basin Economic Recovery Act [87] revised the tax laws to allow deductions for attending conventions in the Caribbean Basin countries. No such deductions are allowed, however, if a country does not enter into an agreement with the United States to override any bank secrecy laws and provide information to the United States relating to tax matters.

In enacting this legislation, Congress recognized that many of the Caribbean Basin countries were tax havens and that citizens of the United States were utilizing these tax havens to avoid United States taxes. Because tax havens often have bank secrecy laws, U.S. citizens could hide their income and income producing assets. These tax havens were particularly attractive to persons with illegal income, such as narcotics traffickers.[88] By tying provisions favorable to the tourist economies of these countries, to provisions requiring cooperation with U.S. money laundering investigations, Congress hoped to reduce the use of these tax havens by U.S. citizens.

C. The International Narcotics Control Act of 1985

In addition to addressing narcotics trafficking, the International Narcotics Control Act of 1985 [89] addressed the problem of money laundering. Section 619 of the Act notes that many banks in Latin America and the Caribbean are used by narcotics traffickers to launder money, and that this use is assisted by the confidentiality provided by these banks. The need for cooperation of foreign governments in gaining access to the bank accounts of narcotics traffickers is also noted. The response to this problem, as set forth in Section 619, is for the President to negotiate agreements with all countries which provide confidential banking services. The agreements would require such countries to disclose to the U.S. bank records of persons under investigation for violations of United States law, particularly drug trafficking.

Some progress has been made in obtaining cooperation from the governments of such Caribbean countries. For example, the Cayman Islands, a major money laundering center, was the subject of an agreement entered into in July 1984 between the United States and the United Kingdom. The agreement eased Caymanian bank secrecy where the United States could show evidence of drug trafficking. On July 3, 1986, the United States and United Kingdom entered into the Treaty Concerning the Cayman Islands and Mutual Legal Assistance in Criminal Matters,[90] which gives even greater access to banking records.[91] Several other Caribbean coun-

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[87] Pub. L. No. 98-67, § 221 *et seq.*, 97 Stat. 395.
[88] H. Rep. No. 266, 98th Cong. 1st Sess.
[89] Pub. L. No. 99-83, § 619, 99 Stat. 233.
[90] 26 I.L.M. 536 (1987).
[91] Narcotics Control Report at 353-35

tries have entered into agreements for the exchange of tax information.[92]

D. The Money Laundering Control Act of 1986

The most ambitious legislative effort thus far addressing the problem of money laundering is The Money Laundering Control Act of 1986.[93] This Act intended to rectify loopholes in the Bank Secrecy Act, discussed above, and to create a means to effectively combat money laundering.

1. *New Money Laundering Offenses.*—Section 1352 of the Act creates new offenses of money laundering, adding Sections 1956 and 1957 to Title 18 of the United States Code.

Section 1956(a)(1) makes it a crime for anyone to conduct or attempt to conduct a financial transaction with the proceeds of some unlawful activity, where such person (1) knows that the property involved is the proceeds of some unlawful activity, and (2) either (a) has the intent to promote the carrying on of specified unlawful activity or (b) knows that the transaction is intended either to conceal the nature or source of the proceeds of specified unlawful activity or to avoid any transaction reporting requirement.

Section 1956(a)(2) makes it a crime for anyone to transport or attempt to transport a monetary instrument or funds between the United States and another country either (1) with the intent to promote the carrying on of specified unlawful activity or (2) knowing that the monetary instrument or funds are the proceeds of some unlawful activity, and knowing that the transportation is designed either to conceal the nature or source of the proceeds of specified unlawful activity or to avoid any transaction reporting requirements. This section is designed to illegalize international money laundering transactions.[94]

Many of the elements contained in these offenses are defined by the Act. It explains that a money launderer need not know exactly what crime generated the funds involved in a transaction, but only that the funds are the proceeds of some crime that is a felony under Federal or State law.[95]

The term "transaction" is defined to include various transactions involving financial institutions, such as a deposit, a transfer between accounts, the purchase of a certificate of deposit, or wire transfer, as well as activities, not involving banks, such as the purchase or sale of property.[96] The term "financial transaction" is also defined very broadly. It includes all kinds of commercial activity and is not limited to transactions involving financial institutions. The transaction must in some way affect interstate or foreign commerce.[97]

The term "monetary instruments" is defined to include coin currency of any country, traveler's checks, personal checks, bank checks, money orders, negotiable instruments in bearer form, and

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[92] Nadelmann *supra* n. 25, at 497–498.
[93] Pub. L. No. 99–570, § 1351 *et seq.*, 100 Stat. 5071.
[94] Sen. Rep. No. 433, 99th Cong., 2d. Sess. (1986) at 11.
[95] 18 U.S.C. § 1956(c)(1).
[96] 18 U.S.C. § 1956(c)(3).
[97] *Justice Depart. Handbook* at 62–63.

investment securities in such form that title thereto passes on delivery. As discussed above, the Bank Secrecy Act reporting requirements did not apply to any type of bank checks.

The crimes covered by the term "specified unlawful activity" are those crimes most commonly associated with organized crime, drug trafficking and financial misconduct, and are listed in Section 1956.[98]

Section 1956 also provides for extraterritorial jurisdiction if (1) the transaction involves funds in excess of $10,000, and (2) the money laundering is conducted either by a U.S. citizen, or by a non-U.S. citizen within the United States.[99] This section clarifies the jurisdiction of the United States over extraterritorial acts that fall within the scope of section 1956; it is not intended that foreign citizens operating wholly outside the United States be aware of United States law.[100]

Section 1957 creates a new offense entitled "engaging in monetary transactions in property derived from specified unlawful activity". This section makes it a crime to knowingly engage or attempt to engage in monetary transaction in criminally derived property, where the property is derived from one of the specified unlawful activities identified in section 1956(c)(1) and has a value of excess of $10,000.[101]

The knowledge requirement under section 1957 is somewhat different from section 1956; it requires only that the individual know that the monies involved are derived from some kind of criminal activity.[102] The extraterritorial jurisdiction provisions differ as well. Section 1957 has a broader territorial reach, with jurisdiction for a Section 1957 offense based upon the offense taking place in the United States or based upon special maritime and territorial jurisdiction of the United States. Also, jurisdiction for offenses occurring outside these areas is available if the defendant is a U.S. citizen.[103]

The term "monetary transaction" which is not utilized in Section 1956, is defined to include the deposit, withdrawal, transfer, or exchange of funds or a monetary instrument, by, through, or to a financial institution, which affects interstate or foreign commerce.[104] Thus, this section is limited to transactions involved financial institution, while Section 1956 is not.

Section 1354 of the Act creates a new offense of structuring transactions to evade reporting requirements, adding 31 U.S.C. § 5324 to the Bank Secrecy Act. This section authorizes civil and criminal penalties for the following:

> (1) causing or attempting to cause a domestic financial institution to fail to file a currency transaction report;
>
> (2) causing or attempting to cause a domestic financial institution to file a currency transaction report which contains a material omission or misstatement of fact; or

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[98] *Id.* at 64.
[99] 18 U.S.C. § 1956(f).
[100] Sen. Rep. No. 433 at 14.
[101] 18 U.S.C. § 1957(a).
[102] Justice Dept Handbook, at 79.
[103] *Id.*
[104] 18 U.S.C. § 1957(f)(1).

(3) structuring or attempting to structure any transaction with one or more financial institutions to evade reporting requirements.[105]

This section thus resolved one of the key problems with the Bank Secrecy Act—that customers who caused banks to fail to file a transaction report were not subject to liability in many jurisdictions.[106] This section reaches money launderers who split up amounts in excess of $10,000 in cash into multiple transactions to avoid reporting requirements.[107]

2. *Amendments to the Right to Financial Privacy Act.*—Section 1353 of the Act amends the Right to Financial Privacy Act[108] to remedy the problems that have arisen in part money laundering investigations. Section 1353(a) amends 12 U.S.C. § 3403(c), which allowed financial institutions to notify authorities of information relevant to a possible violation of a statute or regulation affecting a financial institution. It was unclear under the previous statute exactly what information could be disclosed. Subsection (a) makes it clear that three things can be disclosed: (1) the name of the person conducting the suspect transaction, and other identifying information; (2) the account number; and (3) the nature of the suspected illegal activity.[109] This provision is designed to give government authorities sufficient information about the parties and the nature of the possible violation in order for the authorities to process with a summons, subpoena, or search warrant for additional information.[110]

This subsection also establishes a limited "good faith defense" for financial institutions which provide such voluntary disclosure. As long as a financial institution limits its disclosure to these three pieces of information, it cannot be subject to civil liability to a customer whose records have been disclosed.[111] This subsection also preempts State and local privacy laws to the extent they prohibit voluntary disclosure of the above specified information.[112]

Finally, Section 1353(b) authorizes delayed notification to customers that a grand jury subpoena for that customer's records has been served on a financial institution.[113]

3. *Forfeiture Provisions.*—Section 1366 of the Act adds a new chapter 46 to title 18 of the United States Code authorizing civil and criminal forfeitures relating to, but not necessarily involving, money laundering. It consists of Section 981 and 982, which prescribe civil and criminal forfeitures, respectively.[114]

Section 981(a)(1) makes three types of property forfeitable to the United States.

(1) Any real or personal property which represents the gross receipts of a violations of 18 U.S.C. §§ 1956 or 1957, or which is traceable to such receipts.

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[105] 31 U.S.C. § 5324.
[106] H. Rep. No. 746, 99th Cong., 2d Sess. (1986) at 18–19.
[107] *Justice Dept. Handbook* at 86.
[108] 12 U.S.C. § 3401 *et seq.*
[109] *Justice Dept. Handbook* at 87–88.
[110] S. Rep. No. 433 at 15.
[111] *Id.* at 16.
[112] *Justice Dept. Handbook* at 89.
[113] S. Rep. No. 433 at 17.
[114] *Justice No. Dept. Handbook* at 43.

(2) Any property within the jurisdiction of the United States which represents the proceeds of a violation of a foreign drug law. The crime must also be a felony under United States law.

(3) Any coin or currency (or any monetary instructment prescribed by the Secretary of the Treasury) or any property traceable thereto, involved in a transaction in violation of the currency transaction reporting requirement or the new provision prohibiting structuring a transaction to avoid reporting requirements.

The procedures for accomplishing this civil forfeiture, contained in Subsections 981(b)-(h) are patterned after the civil forfeiture povisions in title 21.[115]

Further, subsection 981(i) provides for the discretionary transfer of property forfeited under this section to foreign countries participating in acts which led to the forfeiture of such property. This subsection was designed, in part, to implement article 18 of the Treaty between the United States and the Italian Republic on Mutual Assistance in Criminal Matters. Article 18 provides that both countries have the authority to seize assets found within their borders, based upon a violation of the other country's laws.[116]

Section 982(a) sets forth mandatory criminal forfeiture provisions. It provides for the forfeiture of all real or personal property involved in a violation of Section 1956 which represents or is traceable to the gross receipts of the money laundering. The criminal forfeiture provision in title 21 are incorporated into the Act.

E. The Narcotics Control Trade Act and the International Narcotics Control Act of 1986

Besides tying efforts to combat narcotics trafficking with receipt of trade benefits, the Narcotics Control Trade Act[117] tied efforts to eliminate laundering of drug money to such benefits. In addition, the International Narcotics Control Act of 1986[118] tied the receipt of economic assistance to efforts to eliminate money laundering. The certification by the President required under both these Acts,[119] must take into consideration whether the country has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering of drug money in that country. These steps include (1) the enactment and enforcement of laws prohibiting such conduct, (2) the willingness to enter into a mutual legal assistance treaty with the United States governing money laundering, and (3) cooperation in other ways with U.S. law enforcement authorities on anti-money laundering effects.

F. Representative Mutual Legal Assistance Treaties

The United States has recently entered into mutual legal assistance treaties intended to penetrate foreign bank secrecy laws and to increase cooperation of foreign governments in tracing criminal proceeds moved through international channels.

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[115] S. Rep. No. 433 at 23.
[116] *Id.*, at 24.
[117] Pub. L. No. 99-570, §9001, 100 Stat. 5217.
[118] Pub. L. No. 99-570, §2005, 100 Stat. 5114.
[119] *See supra* notes 39, 43 and acompanying text.

One of the most important such treaties was with Switzerland.[120] Switzerland is noted for its secret bank accounts. U.S. investigations of criminal enterprises were being compromised by this bank secrecy and by the refusal of the Swiss Government to cooperate with these investigations.[121] Chapter II of this treaty required increased cooperation by the Swiss Government in U.S. investigations of organized crime figures. The treaty, however, did not provide for complete penetration of the bank secrecy laws for investigation of tax offenses.[122]

The mutual legal assistance treaty with Italy[123] is also noteworthy, as it provides for the immobilization and forfeiture of assets. Both countries have the authority under this treaty, in emergency situations, to immobilize assets found in that country and, after the appropriate judicial proceedings, to order their forfeiture. This provision was intended to be utilized to effect the forfeiture of assets of international drug traffickers.[124] This treaty is also noteworthy, as it provides for an "international subpoena." For the first time in the history of international law, a witness may be compelled to appear and testify in a foreign nation without his consent.[125]

As discussed above, some progress has been made in negotiating mutual legal assistance treaties with tax havens in the Caribbean Basin. Of key importance is the treaty concerning the Cayman Islands, which treaty remains to be ratified. Despite these limited successes, however, there are significant tax haven countries with which the United States does not have a mutual legal assistance treaty. Panama is currently one of the largest offshore banking centers in the world, and a major money laundering center. U.S. efforts to negotiate a mutual legal assistance treaty with Panama have thus far been unsuccessful.[126] Mexico is also a country where money laundering occurs due to the passage of drug trafficking proceeds across the United States-Mexico border. A mutual legal assistance treaty has been negotiated with Mexico, and is currently under review.[127] There are also other Caribbean countries where some money laundering takes place which have no mutual legal assistance treaty with the United States, such as the Bahamas and Jamaica.[128] The negotiation of treaties with Panama and Caribbean tax haven countries, and the passage of a treaty with Mexico are important to this country's continued anti-money laundering efforts.

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[120] Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, 25 May 1973, 27 UST 2019, TIAS 8302 (effective 23 January 1977).

[121] Nadelmann, at 470.

[122] *Id.* at 476-477.

[123] Treaty between the United States of America and the Italian Republic on Mutual Legal Assistance in Criminal Matters with Memorandum of Understanding, 9 November 1982, 24 ILM 1536 (effective 13 November 1985).

[124] Letter of Submittal to Treaty with the Italian Republic on Mutual Assistance in Criminal Matters (June 1, 1984), at VII.

[125] Nadelmann, at 492-493.

[126] Narcotics Control Report at 351-352.

[127] *Id.* at 356.

[128] *Id.* 352, 355-356.

APPENDIX

CURRENCY AND FOREIGN TRANSACTIONS REPORTING ACT

ance of the commission of any violation of Federal law punishable by imprisonment for more than one year, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 128. Compliance

The Secretary shall have the responsibility to assure compliance with the requirements of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

§ 129. Administrative procedure

The administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code, shall apply to all proceedings under this chapter, section 21 of the Federal Deposit Insurance Act, and section 411 of the National Housing Act.

TITLE II—REPORTS OF CURRENCY AND FOREIGN TRANSACTIONS

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Chapter 1.—GENERAL PROVISIONS

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211. Immunity of witnesses.
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§ 201. Short title

This title may be cited as the "Currency and Foreign Transactions Reporting Act".

§ 202. Purpose

It is the purpose of this title to require certain reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 203. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section apply for the purposes of this title.

(b) The term "Secretary" means the Secretary of the Treasury.

(c) The term "person" includes natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities. The term also includes any governmental department or agency specified by the Secretary either for the purpose of this title generally or any particular requirement thereunder.

(d) The term "United States", used in a geographical sense, includes the States and the District of Columbia, and to the extent the Secretary shall by regulation specify, either for the purposes of this title generally or any particular requirement thereunder, the Commonwealth of Puerto Rico, the possessions of the United States, United States military establishments, and United States diplomatic establishments.

(e) The term "financial institution" means any person which does business in any one or more of the following capacities:

(1) an insured bank as defined in section 3 of the Federal Deposit Insurance Act;

(2) a commercial bank or trust company;

(3) a private banker;

(4) an agency or a branch within the United States of any foreign bank;

(5) an insured institution as defined in section 401 of the National Housing Act;

(6) a savings bank, building and loan association, credit union, industrial bank, or other thrift institution;

(7) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(8) a broker or dealer in securities or commodities;

(9) an investment banker or investment company;

(10) a currency exchange;

(11) an issuer, redeemer or cashier of travelers' checks, checks, money orders, or similar instruments;

(12) an operator of a credit card system;

(13) an insurance company;

(14) a dealer in precious metals, stones, or jewels;

(15) a pawnbroker;

(16) a loan or finance company;

(17) a travel agency;

(18) a licensed transmitter of funds;

(19) a telegraph company;

(20) a Federal, State, or local government institution which performs any of the functions of any of the businesses listed above; or

(21) any other type of business or institution performing similar, related, or substitute functions specified by the Secretary by regulation for the purposes of the provision of this title to which the regulation relates.

(f) The term "domestic", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears

to the performance by such institutions or agencies of functions within the United States.

(g) The term "financial agency" means any person which acts in the capacity of a financial institution or in the capacity of a bailee, depository trustee, agent, or in any other similar capacity with respect to money, credit, securities, or gold or transactions therein, on behalf of any person other than a government, a monetary or financial authority when acting as such, or an international financial institution of which the United States is a member.

(h) The term "foreign", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears to the performance by such institutions or agencies of functions outside the United States.

(i) References to this title or any provision thereof include regulations issued under this title or the provision thereof in question.

(j) All reports required under this title and all records of any such reports are specifically exempted from disclosure under section 552 of title 5, United States Code.

(k) For the purposes of section 1001 of title 18, United States Code, the contents of reports required under any provision of this title are statements and representations in matters within the jurisdiction of an agency of the United States.

(*l*) The term "monetary instruments" means coin and currency of the United States, and in addition, such foreign coin and currencies, and such types of travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock with title passing upon delivery, or the equivalent thereof, as the Secretary may by regulation specify for the purposes of the provision of this title to which the regulation relates.

§ 204. Regulations

The Secretary shall prescribe such regulations as he may deem appropriate to carry out the purposes of this title.

§ 205. Compliance

(a) The Secretary shall have the responsibility to assure compliance with the requirements of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

(b) The Secretary may by regulation require any class of domestic financial institutions to maintain such procedures as he may deem appropriate to assure compliance with the provisions of this title. For the purposes of both civil and criminal penalties for violations of this section, a separate violation shall be deemed to occur with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

§ 206. Exemptions

The Secretary may make such exemptions from any requirement otherwise imposed under this title as he may deem appropriate. Any

such exemption may be conditional or unconditional, by regulation, order, or licensing, or any combination thereof, and may relate to any particular transaction, to the type or amount of the transaction, to the party or parties or the classification of parties, or to any combination thereof. The Secretary may in his discretion, in any manner giving actual or constructive notice to the parties affected, revoke any exemption made under this section. Any such revocation shall remain in effect pending any judicial review.

§ 207. Civil penalty

(a) For each willful violation of this title, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this title, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

§ 208. Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of the provisions of this title, or of any order thereunder, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with the provisions of this title or any order of the Secretary made in pursuance thereof.

§ 209. Criminal penalty

Whoever willfully violates any provision of this title or any regulation under this title shall be fined not more than $1,000, or imprisoned not more than one year, or both.

§ 210. Additional criminal penalty in certain cases

Whoever willfully violates any provision of this title where the violation is—

(1) committed in furtherance of the commission of any other violation of Federal law, or

(2) committed as part of a pattern of illegal activity involving transactions exceeding $100,000 in any twelve-month period,

shall be fined not more than $500,000 or imprisoned not more than five years, or both.

§ 211. Immunity of witnesses

Whenever a witness refuses on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding involving any violation of this title before or ancillary to—

(1) a court or grand jury of the United States,

(2) an agency of the United States, or

(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order requiring him to give testimony or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. No such testimony or other information so compelled under the order or evidence or other information which is obtained by the exploitation of such testimony may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 212. Availability of information to other Federal agencies

The Secretary shall, upon such conditions and pursuant to such procedures as he may by regulation prescribe, make any information set forth in reports filed pursuant to this title available for a purpose consistent with the provisions of this title to any other department or agency of the Federal Government on the request of the head of such department or agency.

§ 213. Administrative procedure

Subject to section 203(j), the administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code, shall apply to all proceedings under this title.

Chapter 2.—DOMESTIC CURRENCY TRANSACTIONS

Sec.
221. Reports of currency transactions required.
222. Persons required to file reports.
223. Reporting procedure.

§ 221. Reports of currency transactions required

Transactions involving any domestic financial institution shall be reported to the Secretary at such time, in such manner, and in such detail as the Secretary may require if they involve the payment, receipt, or transfer of United States currency, or such other monetary instruments as the Secretary may specify, in such amounts, denominations, or both, or under such circumstances, as the Secretary shall by regulation prescribe.

§ 222. Persons required to file reports

The report of any transaction required to be reported under this chapter shall be signed or otherwise made both by the domestic financial institution involved and by one or more of the other parties

thereto or participants therein, as the Secretary may require. If any party to or participant in the transaction is not an individual acting only for himself, the report shall identify the person or persons on whose behalf the transaction is entered into, and shall be made by the individuals acting as agents or bailees with respect thereto.

§ 223. Reporting procedure

(a) The Secretary may in his discretion designate domestic financial institutions, individually or by class, as agents of the United States to receive reports required under this chapter, except that an institution which is not insured, chartered, examined, or registered as such by any agency of the United States may not be so designated without its consent. The Secretary may suspend or revoke any such designation for any violation of this Act, or section 21 of the Federal Deposit Insurance Act, or section 411 of the National Housing Act.

(b) Any person (other than an institution designated under subsection (a)) required to file a report under this chapter with respect to a transaction with a domestic financial institution shall file the report with that institution, except that (1) if the institution is not designated under subsection (a), the report shall be filed as the Secretary shall prescribe, and (2) any such person may, at his election and in lieu of filing the report in the manner hereinabove prescribed, file the report with the Secretary. Domestic financial institutions designated under subsection (a) shall transmit reports filed with them, and shall file their own reports, as the Secretary shall prescribe.

Chapter 3.—REPORTS OF EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS

Sec.
231. Reports required.
232. Forfeiture.
233. Civil liability.
234. Remission by the Secretary.
235. Enforcement authority.

§ 231. Reports required

(a) Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee, knowingly—

(1) transports or causes to be transported monetary instruments—

(A) from any place within the United States to or through any place outside the United States, or

(B) to any place within the United States from or through any place outside the United States, or

(2) receives monetary instruments at the termination of their transportation to the United States from or through any place outside the United States

in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b) of this section.

(b) Reports required under this section shall be filed at such times and places, and may contain such of the following information and any additional information, in such form and in such detail, as the Secretary may require:

(1) The legal capacity in which the person filing the report is acting with respect to the monetary instruments transported.

(2) The origin, destination, and route of the transportation.

(3) Where the monetary instruments are not legally and beneficially owned by the person transporting the same, or are transported for any purpose other than the use in his own behalf of the person transporting the same, the identities of the person from whom the monetary instruments are received, or to whom they are to be delivered, or both.

(4) The amounts and types of monetary instruments transported.

(c) Subsection (a) does not apply to any common carrier of passengers in respect of monetary instruments in the possession of its passengers, nor to any common carrier of goods in respect of shipments of monetary instruments not declared to be such by the shipper.

§ 232. Forfeiture

(a) Any monetary instruments which are in the process of any transportation with respect to which any report required to be filed under section 231(1) either has not been filed or contains material omissions or misstatements are subject to seizure and forfeiture to the United States.

(b) For the purpose of this section, monetary instruments transported by mail, by any common carrier, or by any messenger or bailee, are in process of transportation from the time they are delivered into the possession of the postal service, common carrier, messenger, or bailee until the time they are delivered into or retained in the possession of the addressee or intended recipient or any agent of the addressee or intended recipient for purposes other than further transportation within, or across any border of, the United States.

§ 233. Civil liability

The Secretary may assess a civil penalty upon any person who fails to file any report required under section 231, or who files such a report containing any material omission or misstatement. The amount of the penalty shall not exceed the amount of the monetary instruments with respect to whose transportation the report was required to be filed. The liabilities imposed by this chapter are in addition to any other liabilities, civil or criminal, except that the liability under this section shall be reduced by any amount actually forfeited under section 232.

§ 234. Remission by the Secretary

The Secretary may in his discretion remit any forfeiture or penalty under this chapter in whole or in part upon such terms and conditions as he deems reasonable and just.

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§ 235. Enforcement authority

(a) If the Secretary has reason to believe that monetary instruments are in the process of transportation and with respect to which a report required under section 231 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles.

Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(b) This section is not in derogation of the authority of the Secretary under any other law.

CHAPTER 4.—FOREIGN TRANSACTIONS

Sec.
241. Records and reports required.
242. Classifications and requirements.

§ 241. Records and reports required

(a) The Secretary of the Treasury, having due regard for the need to avoid impeding or controlling the export or import of currency or other monetary instruments and having due regard also for the need to avoid burdening unreasonably persons who legitimately engage in transactions with foreign financial agencies, shall by regulation require any resident or citizen of the United States, or person in the United States and doing business therein, who engages in any transaction or maintains any relationship, directly or indirectly, on behalf of himself or another, with a foreign financial agency to maintain records or to file reports, or both, setting forth such of the following information, in such form and in such detail, as the Secretary may require:

(1) The identities and addresses of the parties to the transaction or relationship.

(2) The legal capacities in which the parties to the transaction or relationship are acting, and the identities of the real parties in interest if one or more of the parties are not acting solely as principals.

(3) A description of the transaction or relationship including the amounts of money, credit, or other property involved.

(b) No person required to maintain records under this section shall be required to produce or otherwise disclose the contents of the records except in compliance with a subpena or summons duly authorized and issued or as may otherwise be required by law.

§ 242. Classifications and requirements

The Secretary may prescribe:

(1) Any reasonable classification of persons subject to or exempt from any requirement imposed under section 241.

(2) The foreign country or countries as to which any requirement imposed under section 241 applies or does not apply if, in the judgment of the Secretary, uniform applicability of any such requirement to all foreign countries is unnecessary or undesirable.

(3) The magnitude of transactions subject to any requirement imposed under section 241.

(4) Types of transactions subject to or exempt from any requirement imposed under section 241.

(5) Such other matters as he may deem necessary to the application of this chapter.

TITLE III—MARGIN REQUIREMENTS

§ 301. Amendment of section 7 of the Securities Exchange Act of 1934

(a) Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g)[53] is amended by adding at the end thereof the following new subsection:

"(f) (1) It is unlawful for any United States person, or any foreign person controlled by a United States person or acting on behalf of or in conjunction with such person, to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender (without regard to whether the lender's office or place of business is in a State or the transaction occurred in whole or in part within a State) for the purpose of (A) purchasing or carrying United States securities, or (B) purchasing or carrying within the United States of any other securities, if, under this section or rules and regulations prescribed thereunder, the loan or other credit transaction is prohibited or would be prohibited if it had been made or the transaction had otherwise occurred in a lender's office or other place of business in a State.

"(2) For the purposes of this subsection—

"(A) The term 'United States person' includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

"(B) The term 'United States security' means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

"(C) The term 'foreign person controlled by a United States person' includes any noncorporate entity in which United States

53. 15 U.S.C.A. § 78g(f) (1) to (3).

Ante, p. 11. "Federal office."

eral Election Campaign Act of 1971, and the term "Federal office" has the same meaning given such term by section 301(c) of such Act.

EFFECT ON STATE LAW

SEC. 403. (a) Nothing in this Act shall be deemed to invalidate or make inapplicable any provision of any State law, except when compliance with such provision of law would result in a violation of a provision of this Act.

(b) Notwithstanding subsection (a), no provision of State law shall be construed to prohibit any person from taking any action authorized by this Act or from making any expenditure (as such term is defined in section 301(f) of this Act) which he could lawfully make under this Act.

PARTIAL INVALIDITY

SEC. 404. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

REPEALING CLAUSE

43 Stat. 1070.

SEC. 405. The Federal Corrupt Practices Act, 1925 (2 U.S.C. 241-256), is repealed.

EFFECTIVE DATE

SEC. 406. Except as provided for in section 401 of this Act, the provisions of this Act shall become effective on December 31, 1971, or sixty days after the date of enactment of this Act, whichever is later.

Approved February 7, 1972.

Public Law 92-226

AN ACT

February 7, 1972
[S. 2819]

To amend the Foreign Assistance Act of 1961, and for other purposes.

Foreign Assistance Act of 1971

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Assistance Act of 1971".

FOOD-FOR-PEACE PROGRAM

75 Stat. 424. 22 USC 2151 note

SEC. 2. It is the sense of the Congress that funds to administer the food-for-peace program should not be reduced as the result of any reduction in the authorizations provided to carry out the Foreign Assistance Act of 1961.

CONTINGENCY FUND

East Pakistan.
83 Stat. 819; 84 Stat. 1942.
22 USC 2261.

SEC. 108. Section 451(a) of chapter 5 of part I of the Foreign Assistance Act of 1961, relating to the contingency fund, is amended by striking out "for the fiscal year 1970 not to exceed $15,000,000, and for the fiscal year 1971 not to exceed $30,000,000" and inserting in lieu thereof "for the fiscal year 1972 not to exceed $30,000,000, and for the fiscal year 1973 not to exceed $30,000,000".

INTERNATIONAL NARCOTICS CONTROL AND REFUGEE RELIEF ASSISTANCE

75 Stat. 424; 80 Stat. 802.
22 USC 2151.

SEC. 109. Part I of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new chapters:

"CHAPTER 8—INTERNATIONAL NARCOTICS CONTROL

"SEC. 481. INTERNATIONAL NARCOTICS CONTROL.—It is the sense of the Congress that effective international cooperation is necessary to put an end to the illicit production, trafficking in, and abuse of dangerous drugs. In order to promote such cooperation, the President is authorized to conclude agreements with other countries to facilitate control of the production, processing, transportation, and distribution of narcotic analgesics, including opium and its derivatives, other narcotic drugs and psychotropics and other controlled substances as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513). Notwithstanding any other provision of law, the President is authorized to furnish assistance to any country or international organization, on such terms and conditions as he may determine, for the control of the production of, processing of, and traffic in, narcotic and psychotropic drugs. In furnishing such assistance the President may use any of the funds made available to carry out the provisions of this Act. The President shall suspend economic and military assistance furnished under this or any other Act, and shall suspend sales under the Foreign Military Sales Act and under title I of the Agricultural Trade Development and Assistance Act of 1954, with respect to any country when the President determines that the government of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) produced or processed, in whole or in part, in such country, or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents, or from entering the United States unlawfully. Such suspension shall continue until the President determines that the government of such country has taken adequate steps to carry out the purposes of this chapter.

84 Stat. 1236
21 USC 801 note

82 Stat. 1320
22 USC 2751 note

80 Stat. 1526.
7 USC 1701.

"CHAPTER 9—REFUGEE RELIEF ASSISTANCE

East Pakistan

"SEC. 491. REFUGEE RELIEF ASSISTANCE.—There is authorized to be appropriated to the President for the fiscal year 1972, in addition to funds otherwise available for such purpose, not to exceed $250,000,000, to remain available until expended, for use by the President in providing assistance for the relief and rehabilitation of refugees from East Pakistan and for humanitarian relief in East Pakistan. Such assistance shall be distributed, to the maximum extent practicable, under the auspices of and by international institutions and relief agencies or United States voluntary agencies.".

of such countries exceeds $5,000,000 during a calendar year, then all subsequent provisions of credits, guarantees or insurance in any amount, during such year shall be reported to the Board under the provisions of paragraph (1).

Report to Congress.

(c) The Board shall submit to Congress a quarterly report on trade between the United States and nonmarket economy countries and instrumentalities of such countries. Such report shall include a review of the status of negotiations of bilateral trade agreements between the United States and such countries under this title, the activities of joint trade commissions created pursuant to such agreements, the resolution of commercial disputes between the United States and such countries, any exports from such countries which have caused disruption of United States markets, and recommendations for the promotion of east-west trade in the national interest of the United States.

TITLE V—GENERALIZED SYSTEM OF PREFERENCES

19 USC 2461.

SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries; and

(3) the anticipated impact of such action on United States producers of like or directly competitive products.

19 USC 2462.

SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

"Beneficiary developing country."

(a)(1) For purposes of this title, the term "beneficiary developing country" means any country with respect to which there is in effect an Executive order by the President of the United States designating such country as a beneficiary developing country for purposes of this title. Before the President designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(2) If the President has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation (either by issuing an Executive order for that purpose or by issuing an Executive order which has the effect of terminating such designation) unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

"Country."

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, the President may by Executive order provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

(b) No designation shall be made under this section with respect to any of the following: Designation restriction.

Australia	Japan
Austria	Monaco
Canada	New Zealand
Czechoslovakia	Norway
European Economic Community member states	Poland
	Republic of South Africa
Finland	Sweden
Germany (East)	Switzerland
Hungary	Union of Soviet Socialist Republics
Iceland	

In addition, the President shall not designate any country a beneficiary developing country under this section—

(1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement on Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy; withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level which causes serious disruption of the world economy;

(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless—

(D) the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(5) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances (as listed in the schedules in section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812)) produced, processed, or transported in such country from entering the United States unlawfully; and

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

Paragraphs (4), (5), and (6) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country; and

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country.

(d) General headnote 3(a) to the Tariff Schedules of the United States (19 U.S.C. 1202) (relating to products of insular possessions) is amended by adding at the end thereof the following new paragraph:

"(iii) Subject to the limitations imposed under sections 503(b) and 504(c) of the Trade Act of 1974, articles designated eligible articles under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treat-

ment no less favorable than the treatment afforded such articles imported from a beneficiary developing country under title V of such Act."

(e) The President may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access. Exemptions. 19 USC 2462.

SEC. 503. ELIGIBLE ARTICLES. 19 USC 2463.

(a) The President shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. Before any such list is furnished to the Commission, there shall be in effect an Executive order under section 502 designating beneficiary developing countries. The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action under section 101 of this Act to carry out a trade agreement entered into under section 101. After receiving the advice of the Commission with respect to the listed articles, the President shall designate those articles he considers appropriate to be eligible articles for purposes of this title by Executive order. *Ante*, pp. 1994, 1995. *Ante*, p. 1982.

(b) The duty-free treatment provided under section 501 with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

(2)(A) if the sum of (i) the cost or value of the materials produced in the beneficiary developing country plus (ii) the direct costs of processing operations performed in such beneficiary developing country is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States; or

(B) if the sum of (i) the cost or value of the materials produced in 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), plus (ii) the direct costs of processing operations performed in such countries is not less than 50 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

For purposes of paragraph (2)(A), the term "country" does not include an association of countries which is treated as one country under section 502(a)(3) but does include a country which is a member of any such association. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection. "Country." Regulations.

(c)(1) The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles— Import-sensitive articles.

(A) textile and apparel articles which are subject to textile agreements,

(B) watches,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear articles specified in items 700.05 through 700.27, 700.29 through 700.53, 700.55.23 through 700.55.75, and 700.60 through 700.80 of the Tariff Schedules of the United States,

19 USC 1202.

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

Ante, p. 2015.
19 USC 1862, 1981.

SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

19 USC 2464.

(a) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

Beneficiary developing country, designation withdrawal or suspension.

(b) The President shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order revoking his designation of such country under section 502.

(c)(1) Whenever the President determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1974, or

(B) except as provided in subsection (d), has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year,

then, not later than 60 days after the close of such calendar year, such country shall not be treated as a beneficiary developing country with respect to such article, except that, if before such 60th day, the President determines and publishes in the Federal Register that, with respect to such country—

Publication in Federal Register.

(i) there has been an historical preferential trade relationship between the United States and such country,

(ii) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(iii) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

then he may designate, or continue the designation of, such country as a beneficiary developing country with respect to such article.

(2) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection

may be redesignated, subject to the provisions of section 502, a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in paragraph (1) of this subsection during the preceding calendar year.

(d) Subsection (c)(1)(B) does not apply with respect to any eligible article if a like or directly competitive article is not produced on the date of enactment of this Act in the United States.

Puerto Rico, imported coffee, duty.

(e) No action pursuant to section 501 may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. sec. 1319) on coffee imported into Puerto Rico.

SEC. 505. TIME LIMIT ON TITLE; COMPREHENSIVE REVIEW. 19 USC 2465.

(a) No duty-free treatment under this title shall remain in effect after the date which is 10 years after the date of the enactment of this Act.

Presidential report to Congress.

(b) On or before the date which is 5 years after the date of the enactment of this Act, the President shall submit to the Congress a full and complete report of the operation of this title.

TITLE VI—GENERAL PROVISIONS

SEC. 601. DEFINITIONS. 19 USC 2481.

For purposes of this Act—

(1) The term "duty" includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

(2) The term "other import restriction" includes a limitation, prohibition, charge, and exaction other than duty, imposed on importation or imposed for the regulation of importation. The term does not include any orderly marketing agreement.

(3) The term "ad valorem" includes ad valorem equivalent. Whenever any limitation on the amount by which or to which any rate of duty may be decreased or increased pursuant to a trade agreement is expressed in terms of an ad valorem percentage, the ad valorem amount taken into account for purposes of such limitation shall be determined by the President on the basis of the value of imports of the articles concerned during the most recent representative period.

(4) The term "ad valorem equivalent" means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during the most recent representative period. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 402 or 402a of the Tariff Act of 1930 (19 U.S.C. sec. 1401a or 1402) applicable to the article concerned during such representative period.

(5) An imported article is "directly competitive with" a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

INTERNATIONAL DEVELOPMENT COOPERATION ACT OF 1979

PUBLIC LAW 96-53 [H.R. 3324]; Aug. 14, 1979

AUTHORIZATION, APPROPRIATIONS—INTERNATIONAL DEVELOPMENT COOPERATION ACT OF 1979

For Legislative History of Act, see p. 857

An Act to authorize appropriations for fiscal year 1980 for international development and economic assistance programs and for the Peace Corps, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

International Development Cooperation Act of 1979.

SHORT TITLE

SECTION 1. This Act may be cited as the "International Development Cooperation Act of 1979". 22 USC 2151 note.

TITLE I—DEVELOPMENT ASSISTANCE

AGRICULTURE, RURAL DEVELOPMENT, AND NUTRITION

SEC. 101. (a) Section 103(a)(2) of the Foreign Assistance Act of 1961 is amended by amending the first sentence to read as follows: "There are authorized to be appropriated to the President for purposes of this section, in addition to funds otherwise available for such purposes, $659,000,000 for the fiscal year 1980.". Appropriation authorization. 92 Stat. 943. 22 USC 2151a.

(b) Section 103(b) of such Act is amended by adding at the end thereof the following new paragraph: Forestry projects.

"(3) The Congress recognizes that the accelerating loss of forests and tree cover in developing countries undermines and offsets efforts to improve agricultural production and nutrition and otherwise to meet the basic human needs of the poor. Deforestation results in increased flooding, reduction in water supply for agricultural capacity, loss of firewood and needed wood products, and loss of valuable plants and animals. In order to maintain and increase forest resources, the President is authorized to provide assistance under this section for forestry projects which are essential to fulfill the fundamental purposes of this section. Emphasis shall be given to community woodlots, agroforestry, reforestation, protection of watershed forests, and more effective forest management.".

(c) Section 103 of such Act is amended by adding at the end thereof the following new subsection: National food security.

"(f) The Congress finds that the efforts of developing countries to enhance their national food security deserves encouragement as a matter of United States development assistance policy. Measures complementary to assistance for expanding food production in developing countries are needed to help assure that food becomes increasingly available on a regular basis to the poor in such countries. Therefore, United States bilateral assistance under this Act and the Agricultural Trade Development and Assistance Act of 1954, and United States participation in multilateral institutions, shall emphasize policies and programs which assist developing countries to increase their national food security by improving their food policies and management and by strengthening national food reserves, with particular concern for the needs of the poor, through measures 7 USC 1691 note.

SAHEL DEVELOPMENT PROGRAM—IMPLEMENTATION

SEC. 108. Section 121(c) of the Foreign Assistance Act of 1961 is amended by inserting the following sentence immediately after the first sentence: "In addition to the amount authorized in the preceding sentence and to funds otherwise available for such purposes, there are authorized to be appropriated to the President for purposes of this section $25,000,000.". Appropriation authorization. 22 USC 2151s.

RELATIVELY LEAST DEVELOPED COUNTRIES

SEC. 109. Section 124(c)(2) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new sentence: "Amounts due and payable during fiscal year 1980 to the United States from relatively least developed countries on loans made under this part (or any predecessor legislation) are authorized to be approved for use, in accordance with the provisions of paragraph (1) of this subsection, in an amount not to exceed $18,800,000.". 92 Stat. 948. 22 USC 2151v.

DEVELOPMENT AND ILLICIT NARCOTICS PRODUCTION

SEC. 110. Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 126. DEVELOPMENT AND ILLICIT NARCOTICS PRODUCTION.—(a) The Congress recognizes that illicit narcotics cultivation is related to overall development problems and that the vast majority of all individuals employed in the cultivation of illicit narcotics reside in the developing countries and are among the poorest of the poor in those countries and that therefore the ultimate success of any effort to eliminate illicit narcotics production depends upon the availability of alternative economic opportunities for those individuals, upon other factors which assistance under this chapter could address, as well as upon direct narcotics control efforts. 22 USC 2151x.

"(b) In planning programs of assistance under this chapter for countries in which there is illicit narcotics cultivation, the agency primarily responsible for administering this part should give priority consideration to programs which would help reduce illicit narcotics cultivation by stimulating broader development opportunities.

"(c) In furtherance of the purposes of this section, the agency primarily responsible for administering this part shall cooperate fully with, and share its expertise in development matters with, other agencies of the United States Government involved in narcotics control activities abroad.". Cooperation with other United States Government agencies abroad.

AMERICAN SCHOOLS AND HOSPITALS ABROAD

SEC. 111. Section 214(c) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(c) To carry out the purposes of this section, there are authorized to be appropriated to the President $25,000,000 for the fiscal year 1980, which are authorized to remain available until expended.". Appropriation authorization. 92 Stat. 950. 22 USC 2174.

HOUSING AND OTHER CREDIT GUARANTY PROGRAMS

SEC. 112. (a) Section 222(a) of the Foreign Assistance Act of 1961 is amended— 92 Stat. 950. 22 USC 2182.

(1) in the second sentence by striking out "$1,180,000,000" and inserting in lieu thereof "$1,555,000,000"; and

Ante, p. 370.

6049(a) with respect to more than 50 payees for any calendar year, all returns under such sections shall be on magnetic media.

"(B) HARDSHIP EXCEPTION.—Subparagraph (A) shall not apply to any person for any period if such person establishes to the satisfaction of the Secretary that its application to such person for such period would result in undue hardship."

26 USC 6011 note.

(b) STUDY OF WAGE RETURNS ON MAGNETIC TAPE.—

(1) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study of the feasibility of requiring persons to file, on magnetic media, returns under section 6011 of the Internal Revenue Code of 1954 containing information described in section 6051(a) of such Code (relating to W-2s).

26 USC 6011.
96 Stat. 1731.
26 USC 6051.

(2) REPORT TO CONGRESS.—Not later than July 1, 1984, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study conducted under paragraph (1).

26 USC 31 note.

SEC. 110. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this title shall apply with respect to payments made after December 31, 1983.

(b) SECTION 102.—The amendments made by section 102 shall take effect as of the close of June 30, 1983.

(c) SECTIONS 104(b) AND 107.—The amendments made by sections 104(b) and 107 shall take effect on the date of the enactment of this Act.

Caribbean Basin Economic Recovery Act.

TITLE II—CARIBBEAN BASIN INITIATIVE

19 USC 2701 note.

SEC. 201. SHORT TITLE.

This title may be cited as the "Caribbean Basin Economic Recovery Act".

Subtitle A—Duty-Free Treatment

19 USC 2701.

SEC. 211. AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this title.

19 USC 2702.

SEC. 212. BENEFICIARY COUNTRY.

Definitions.

(a)(1) For purposes of this title—

(A) The term "beneficiary country" means any country listed in subsection (b) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title. Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

Designation, notification of Congress.

(B) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term "TSUS" means Tariff Schedules of the United States (19 U.S.C. 1202).

Termination, notification of Congress.

(2) If the President has designated any country as a beneficiary country for purposes of this title, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

Eligible countries.

(b) In designating countries as "beneficiary countries" under this title the President shall consider only the following countries and territories or successor political entities:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Nicaragua
Panama
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Cayman Islands
Montserrat
Netherlands Antilles
Saint Christopher-Nevis
Turks and Caicos Islands
Virgin Islands, British

Restrictions.

In addition, the President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

Seizure of U.S. property.

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or country is otherwise taking steps to discharge its gations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

Determination submittal to Congress.

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances (as listed in the schedules in section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812)) produced, processed, or transported in such country from entering the United States unlawfully; and

(7) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens.

Determinations based on U.S. national interest, report to Congress.

Paragraphs (1), (2), (3), and (5) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

Designation criteria.

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979; 19 USC 2503

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) the degree to which workers in such country are afforded reasonable workplace conditions and enjoy the right to organize and bargain collectively;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

(d) General headnote 3(a) of the TSUS (relating to products of the insular possessions) is amended by adding at the end thereof the following paragraph: U.S. insular possessions. 19 USC 1202

"(iv) Subject to the provisions in section 213 of the Caribbean Basin Economic Recovery Act, articles which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such articles when they are imported from a beneficiary country under such Act.". *Infra*

(e) The President shall, after complying with the requirements of subsection (a)(2), withdraw or suspend the designation of any country as a beneficiary country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b). Withdrawal or suspension. 19 USC 2702

SEC. 213. ELIGIBLE ARTICLES. 19 USC 2703

(a)(1) Unless otherwise excluded from eligibility by this title, the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered. Appraised value

For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Common-

wealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

Regulations

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

"Direct costs of processing operations"

(3) As used in this subsection, the phrase "direct costs of processing operations" includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

Exceptions

(b) The duty-free treatment provided under this title shall not apply to—

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

19 USC 2461

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in part 10 of schedule 4 of the TSUS; or

19 USC 1202

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which TSUS column 2 rates of duty apply.

(c)(1) As used in this subsection—

"Sugar and beef products."

(A) The term "sugar and beef products" means—

(i) sugars, sirups, and molasses provided for in items 155.20 and 155.30 of the TSUS, and 19 USC 1202

(ii) articles of beef or veal, however provided for in subpart B of part 2 of schedule 1 of the TSUS.

(B) The term "Plan" means a stable food production plan that consists of measures and proposals designed to ensure that the present level of food production in, and the nutritional level of the population of, a beneficiary country will not be adversely affected by changes in land use and land ownership that will result if increased production of sugar and beef products is undertaken in response to the duty-free treatment extended under this title to such products. A Plan must specify such facts regarding, and such proposed actions by, a beneficiary country as the President deems necessary for purposes of carrying out this subsection, including but not limited to— "Plan"

(i) the current levels of food production and nutritional health of the population;

(ii) current level of production and export of sugar and beef products;

(iii) expected increases in production and export of sugar and beef products as a result of the duty-free access to the United States market provided under this title;

(iv) measures to be taken to ensure that the expanded production of those products because of such duty-free access will not occur at the expense of stable food production; and

(v) proposals for a system to monitor the impact of such duty-free access on stable food production and land use and land ownership patterns.

(2) Duty-free treatment extended under this title to sugar and beef products that are the product of a beneficiary country shall be suspended by the President under this subsection if— Suspension

(A) the beneficiary country, within the ninety-day period beginning on the date of its designation as such a country under section 212, does not submit a Plan to the President for evaluation; *Ante*, p. 384

(B) on the basis of his evaluation, the President determines that the Plan of a beneficiary country does not meet the criteria set forth in paragraph (1)(B); or

(C) as a result of the monitoring of the operation of the Plan under paragraph (5), the President determines that a beneficiary country is not making a good faith effort to implement its Plan, or that the measures and proposals in the Plan, although being implemented, are not achieving their purposes.

(3) Before the President suspends duty-free treatment by reason of paragraph (2) (A), (B), or (C) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the beneficiary country for purposes of formulating appropriate remedial action which may be taken by that country to avoid such suspension. If the beneficiary country thereafter enters into consultation within a reasonable time and undertakes to formulate remedial action in good faith, the President shall withhold the suspension of duty-free treatment on the condition that the remedial action agreed upon be appropriately implemented by that country. Consultation with beneficiary country.

Plan monitoring, report to Congress

(4) The President shall monitor on a biennial basis the operation of the Plans implemented by beneficiary countries, and shall submit a written report to Congress by March 15 following the close of each biennium, that—

(A) specifies the extent to which each Plan, and remedial actions, if any, agreed upon under paragraph (4), have been implemented; and

(B) evaluates the results of such implementation.

(5) The President shall terminate any suspension of duty-free treatment imposed under this subsection if he determines that the beneficiary country has taken appropriate action to remedy the factors on which the suspension was based.

Sugars, syrups and molasses

(d) For such period as there is in effect a proclamation issued by the President pursuant to the authority vested in him by section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to protect a price-support program for sugar beets and sugar cane, the importation and duty-free treatment of sugars, sirups, and molasses classified under items 155.20 and 155.30 of the TSUS shall be governed in the following manner:

19 USC 1202

(1)(A) For all beneficiary countries, except those subject to subparagraph (B) and paragraph (2), duty-free treatment shall be provided in the same manner as it is provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), at the time of the effective date of this title; except that the President upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the value limitation provided for in section 504(c)(1) of the Trade Act of 1974 on the duty-free treatment afforded to beneficiary countries under this section if he finds that such adjustment will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions.

19 USC 2464

(B) As an alternative to subparagraph (A), the President may at the request of a beneficiary country not subject to paragraph (2) and upon the recommendation of the Secretary of Agriculture, elect to permit sugar, sirups, and molasses from that country to enter duty-free during a calendar year subject to quantitative limitations to be established by the President on the quantity of sugar, sirups, and molasses entered from that country.

(2) For the following countries whose exports of sugar, sirups, and molasses in 1981 were not eligible for duty-free treatment because of the operation of section 504(c) of the Trade Act of 1974, the quantity of sugar, sirups, and molasses which may be entered in any calendar year shall be limited to no more than the quantity specified below:

Metric tons	
Dominican Republic	780,000
Guatemala	210,000
Panama	160,000

Such sugar, sirups, and molasses shall be admitted free of duty, except as provided for in paragraph (3).

(3) The President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the quantitative limitations imposed under paragraph (1)(B) or (2) if he determines such action will not interfere with the price support program for sugar beets and sugar cane and is appropriate in

light of market conditions. The President, upon the recommendation of the Secretary of Agriculture, may suspend the duty-free treatment for all or part of the quantity of sugar, sirups, and molasses permitted to be entered by paragraphs (1)(B) and (2) if such action is necessary to protect the price-support program for sugar beets and sugar cane.

(4) Any quantitative limitation imposed on a beneficiary country under paragraphs (1)(B) and (2) shall apply only to the extent that such limitation permits a lesser quantity of sugar, sirups, and molasses to be entered from that country than the quantity that would be permitted to be entered under any other provision of law.

Suspension.

(e)(1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed pursuant to section 203 of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

19 USC 2253.
19 USC 1862.

(2) In any report by the International Trade Commission to the President under section 201(d)(1) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

19 USC 2251.

(3) For purposes of subsections (a) and (c) of section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

19 USC 2253.

(4) No proclamation which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be made under subsections (a) and (c) of section 203 of the Trade Act of 1974 unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974, determines in the course of its investigation under section 201(b) of such Act that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.

19 USC 2251.

(5)(A) Any proclamation issued pursuant to section 203 of the Trade Act of 1974 that is in effect when duty-free treatment pursuant to section 101 of this title is proclaimed shall remain in effect until modified or terminated.

19 USC 2253.

(B) If any article is subject to import relief at the time duty-free treatment is proclaimed pursuant to section 21 i, the President may reduce or terminate the application of such import relief to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of subsections (h) and (i) of section 203 of the Trade Act of 1974.

Ante, p. 384.

19 USC 2253.

Emergency relief, petition filing.

(f)(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

19 USC 2251.

(2) Within fourteen days after the filing of a petition under paragraph (1) of this subsection—

Recommendation to the President

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to a domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

Notice

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

Proclamation

(3) Within seven days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the proclamation of import relief pursuant to section 202(a)(1) of the Trade Act of 1974,

19 USC 2252

(B) on the day the President makes a determination pursuant to section 203(b)(2) of such Act not to impose import relief,

19 USC 2253

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

"Perishable product"

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants provided for in subpart A of part 6 of schedule 1 of the TSUS;

19 USC 1202

(B) fresh or chilled vegetables provided for in items 135.10 through 138.42 of the TSUS;

(C) fresh mushrooms provided for in item 144.10 of the TSUS;

(D) fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(E) fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(F) concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(g) No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

SEC. 214. MEASURES FOR PUERTO RICO AND UNITED STATES INSULAR POSSESSIONS.

19 USC 1202

(a) Effective with respect to articles entered on or after the effective date of this Act, general headnote 3(a) of the TSUS is amended—

(1) by amending clause (i)—

(A) by striking out "50 percent" and inserting in lieu thereof "70 percent", and

(B) by inserting after "total value", "(or more than 50 percent of their total value with respect to articles de-

scribed in section 213(b) of the Caribbean Basin Economic Recovery Act)"; and

(2) by amending clause (ii) by striking out "50 percent" and inserting in lieu thereof "70 percent".

(b) Item 813.31 of the TSUS is amended by striking out "4 liters" and inserting in lieu thereof "5 liters", and by inserting after "United States,", "and not more than 4 liters of which shall have been produced elsewhere than in such insular possessions,".

(c) If the sum of the amounts of taxes covered into the treasuries of Puerto Rico or the United States Virgin Islands pursuant to section 7652(c) of the Internal Revenue Code of 1954 is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the United States Virgin Islands, then the President shall consider compensation measures and, in this regard, may withdraw the duty-free treatment on rum provided by this title. The President shall submit a report to the Congress on the measures he takes.

(d) Section 1112 of the Trade Agreements Act of 1979 (19 U.S.C. 2582) is repealed.

(e) No action pursuant to this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. 1319) on coffee imported into Puerto Rico.

(f) For purposes of chapter 1 of title II of the Trade Act of 1974, the term "industry" shall include producers located in the United States insular possessions.

(g) Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection which discharge is attributable to the manufacture of rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1954) shall not be subject to the requirements of section 301 (other than toxic pollutant discharges), section 306 or section 403 of the Federal Water Pollution Control Act if—

(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

(2) the Governor of the United States Virgin Islands determines that such discharge will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities.

Ante, p. 387.

19 USC 1202.

19 USC 2703 note.

Post, p. 395.

Report to Congress.

Repeal.

Coffee tariff. 19 USC 1319 note.

"Industry." 19 USC 2251 note.

33 USC 1311 note.

Post, p. 395.

33 USC 1311, 1316, 1343.

SEC. 215. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THIS ACT.

19 USC 2704.

(a) The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress and to the President, a report regarding the economic impact of this Act on United States industries and consumers during—

Submittal to Congress and President.

(1) the twenty-four-month period beginning with the date of enactment of this Act; and

(2) each calendar year occurring thereafter until duty-free treatment under this title is terminated under section 216(b).

Infra

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

Assessment

(b)(1) Each report required under subsection (a) shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this Act on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this Act, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this Act.

Submittal period

(c)(1) Each report required under subsection (a) shall be submitted to the Congress and to the President before the close of the nine-month period beginning on the day after the last day of the period covered by the report.

Public comment

(2) The Commission shall provide opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

Report to Congress
19 USC 2705

SEC. 216. IMPACT STUDY BY SECRETARY OF LABOR.

The Secretary of Labor, in consulation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact which the implementation of the provisions of this title have with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.

SEC. 217. FEASIBILITY STUDY REGARDING A CARIBBEAN TRADE INSTITUTE.

(a) The Secretary of State shall prepare a study regarding the feasibility of establishing a Caribbean Trade Institute in Harlem, New York City, supported by a combination of Federal and private funds.

(b) The study shall include, but not be limited to, an assessment of the extent to which, and the means by which, a Caribbean Trade Institute could—

(1) facilitate cooperation between public and private entities interested in engaging in or furthering Caribbean trade;

(2) serve as a catalyst for greater cultural exchange between the United States and Caribbean nations; and

(3) facilitate expansion of job opportunities both in the United States and the Caribbean Basin.

The study shall also include suggestions regarding the organization and staffing of such an institute.

(c) The study required by this section shall be submitted to the Congress within six months after the date of the enactment of this Act. Submittal to Congress.

SEC. 218. EFFECTIVE DATE OF SUBTITLE AND TERMINATION OF DUTY-FREE TREATMENT. 19 USC 2706.

(a) EFFECTIVE DATE.—This subtitle shall take effect on the date of the enactment of this Act.

(b) TERMINATION OF DUTY-FREE TREATMENT.—No duty-free treatment extended to beneficiary countries under this subtitle shall remain in effect after September 30, 1995.

Subtitle B—Tax Provisions

SEC. 221. PAYMENT OF EXCISE TAXES COLLECTED ON RUM TO PUERTO RICO AND THE UNITED STATES VIRGIN ISLANDS.

(a) IN GENERAL.—Section 7652 of the Internal Revenue Code of 1954 (relating to shipments to the United States) is amended by inserting after subsection (b) the following new subsection: 26 USC 7652.

"(c) SHIPMENTS OF RUM TO THE UNITED STATES.—

"(1) EXCISE TAXES ON RUM COVERED INTO TREASURIES OF PUERTO RICO AND VIRGIN ISLANDS.—All taxes collected under section 5001(a)(1) on rum imported into the United States (less the estimated amount necessary for payment of refunds and drawbacks) shall be covered into the treasuries of Puerto Rico and the Virgin Islands. 26 USC 5001.

"(2) SECRETARY PRESCRIBES FORMULA.—The Secretary shall, from time to time, prescribe by regulation a formula for the division of such tax collections between Puerto Rico and the Virgin Islands and the timing and methods for transferring such tax collections.

"(3) RUM DEFINED.—For purposes of this subsection, the term 'rum' means any article classified under item 169.13 or 169.14 of the Tariff Schedules of the United States (19 U.S.C. 1202).

"(4) COORDINATION WITH SUBSECTIONS (a) AND (b).—Paragraph (1) shall not apply with respect to any rum subject to tax under subsection (a) or (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles imported into the United States after June 30, 1983. 26 USC 7652 note.

SEC. 222. TREATMENT OF CARIBBEAN CONVENTIONS, ETC.

(a) GENERAL RULE.—Subsection (h) of section 274 of the Internal Revenue Code of 1954 (relating to attendance at conventions, etc.) is amended by adding at the end thereof the following new paragraph: 26 USC 274.

"(6) TREATMENT OF CONVENTIONS IN CERTAIN CARIBBEAN COUNTRIES.—

"North American area"

"(A) IN GENERAL.—For purposes of this subsection, the term 'North American area' includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

"(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and

"(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

"(B) BENEFICIARY COUNTRY.—For purposes of this paragraph, the term 'beneficiary country' has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

Ante, p. 384

"(C) AUTHORITY TO CONCLUDE EXCHANGE OF INFORMATION AGREEMENTS.—

"(i) IN GENERAL.—The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

"(ii) NONDISCLOSURE OF QUALIFIED CONFIDENTIAL INFORMATION SOUGHT FOR CIVIL TAX PURPOSES.—An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

"(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

"(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

"(iii) QUALIFIED CONFIDENTIAL INFORMATION DEFINED.—For purposes of this subparagraph, the term 'qualified confidential information' means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

"(iv) CIVIL TAX PURPOSES.—For purposes of this subparagraph, the determination of whether information is sought only for civil tax purposes shall be made by the requesting party.

"(D) COORDINATION WITH SECTION 6103.—Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4). 26 USC 6103

"(E) DETERMINATIONS PUBLISHED IN THE FEDERAL REGISTER.—The following shall be published in the Federal Register—

"(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

"(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

"(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to conventions, seminars, or other meetings which begin after June 30, 1983. 26 USC 274 note

SEC. 223. REPORT WITH RESPECT TO USE OF CARIBBEAN BASIN TAX HAVENS.

The Secretary of the Treasury shall, not later than ninety days after the date of the enactment of this Act, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on— Submittal to congressional committees.

(1) the level at which Caribbean Basin tax havens are being used to evade or avoid Federal taxes, and the effect on Federal revenues of such use,

(2) any information he may have on the relationship of such use to drug trafficking and other criminal activities, and

(3) current antitax haven enforcement activities of the Department of the Treasury.

Subtitle C—Sense of the Congress Regarding Sugar Imports

SEC. 231. SUGAR IMPORTS.

It is the sense of the Congress that sugar from any Communist country in the Caribbean Basin or in Central America should not be imported into the United States.

Approved August 5, 1983.

LEGISLATIVE HISTORY—H.R. 2973 (H.R. 500):

HOUSE REPORTS: No. 98-120 (Comm. on Ways and Means) and No. 98-325 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 129 (1983):

May 17, considered and passed House.

June 16, considered and passed Senate, amended.

July 14, House concurred in Senate amendment with an amendment.

July 28, House and Senate agreed to conference report.

(b) Such section is amended by adding at the end thereof the following new subsection:

"(b) RESPONSIBILITY FOR DETECTING AND INVESTIGATING CIVIL AND CRIMINAL VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS.—The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this title and other related Federal laws.".

(c) The title of such section is amended to read as follows:

"COORDINATION AND RESPONSIBILITY OF AGENCIES ENFORCING EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS".

CHAPTER IX—CURRENCY AND FOREIGN TRANSACTIONS REPORTING ACT AMENDMENTS

SEC. 901. (a) Section 5321(a)(1) of title 31, United States Code, is amended by striking out "a civil penalty of not more than $1,000" and inserting in lieu thereof "a civil penalty of not more than $10,000". Crimes and misdemeanors Penalties

(b) Subsection (a) of section 5322 of title 31, United States Code, is amended by striking out "$1,000, or imprisonment not more than one year, or both" and inserting in lieu thereof "$250,000, or imprisonment not more than five years, or both".

(c) Subsection (a) of section 5316 of title 31, United States Code, is amended—

(1) by inserting ", or attempts to transport or have transported," after "transports or has transported" in paragraph (1); and

(2) by striking out "more than $5,000" and inserting in lieu thereof "more than $10,000" in paragraph (1).

(d) Section 5317 of title 31, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting the following new subsection after subsection (a):

"(b) A customs officer may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer has reasonable cause to believe there is a monetary instrument being transported in violation of section 5316 of this title.". 31 USC 5316

(e) Chapter 53 of title 31 of the United States Code is amended by adding a new section 5323 at the end thereof as follows:

"§5323. Rewards for informants 31 USC 5323

"(a) The Secretary may pay a reward to an individual who provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of this chapter.

"(b) The Secretary shall determine the amount of a reward under this section. The Secretary may not award more than 25 per centum

of the net amount of the fine, penalty, or forfeiture collected or $150,000, whichever is less.

"(c) An officer or employee of the United States, a State, or a local government who provides information described in subsection (a) in the performance of official duties is not eligible for a reward under this section.

Appropriations authorization.

"(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.".

(f) The table of contents of chapter 53 of title 31 is amended by adding the following new item after the item relating to section 5322:

"5323. Rewards for informants".

Post, p. 2143.

(g) Section 1961(1) of title 18, United States Code, is amended—

(1) by striking out "or" after "(relating to embezzlement from union funds),"; and

(2) by inserting before the semicolon at the end thereof the following: ", or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act".

31 USC 321, 5311-5314, 5316-5322. Crimes and misdemeanors. Penalties.

CHAPTER X—MISCELLANEOUS VIOLENT CRIME AMENDMENTS

PART A—MURDER-FOR-HIRE AND VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY

SEC. 1001. (a) Chapter 1 of title 18 of the United States Code is amended by adding a new section 16 as follows:

18 USC 16.

"§ 16. Crime of violence defined

"The term 'crime of violence' means—

"(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

"(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

(b) The analysis for chapter 1 of title 18 of the United States Code is amended by adding at the end thereof the following:

"16. Crime of violence defined".

SEC. 1002. (a) Chapter 95 of title 18, United States Code, is amended by adding new sections 1952A and 1952B, following section 1952, as follows:

18 USC 1952A.

"§ 1952A. Use of interstate commerce facilities in the commission of murder-for-hire

Mail.

"(a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, shall be fined not more than $10,000 or imprisoned for not more than five years, or both; and if personal injury results, shall be fined not more

TITLE VI—INTERNATIONAL NARCOTICS CONTROL

International Narcotics Control Act of 1985.

SEC. 601. SHORT TITLE.

22 USC 2151 note.

This title may be cited as the "International Narcotics Control Act of 1985".

SEC. 602. AUTHORIZATIONS FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE.

Subsection (a)(1) of section 482 of the Foreign Assistance Act of 1961 is amended to read as follows:

22 USC 2291a.

22 USC 2291.

"(a)(1) To carry out the purposes of section 481, there are authorized to be appropriated to the President $57,529,000 for fiscal year 1986 and $57,529,000 for fiscal year 1987.".

SEC. 603. DEVELOPMENT AND ILLICIT NARCOTICS PRODUCTION.

22 USC 2151x.

Section 126(b) of the Foreign Assistance Act of 1961 is amended—

(1) by inserting "and under chapter 4 of part II" immediately after "this chapter"; and

(2) by inserting "(1)" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) The agency primarily responsible for administering this part may utilize resources for activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.".

SEC. 604. REPORTS ON INTERNATIONAL NARCOTICS CONTROL ASSISTANCE.

22 USC 2291.

Section 481(b) of the Foreign Assistance Act of 1961 is amended to read as follows:

President of U.S.

"(b)(1) Not later than 45 days after the end of each calendar quarter, the President shall transmit to the Speaker of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a report on the programming and obligation, on a calendar basis, of funds under this chapter prior to the end of that quarter. The last such report for each fiscal year shall include the aggregate obligations and expenditures made, and the types and quantity of equipment provided, on a calendar quarter basis, prior to end of that fiscal year—

"(A) to carry out the purposes of this chapter with respect to each country and each international organization receiving assistance under this chapter, including the cost of the United States personnel engaged in carrying out such purposes in each such country and with each such international organization;

"(B) to carry out each program conducted under this chapter in each country and by each international organization, including the cost of United States personnel engaged in carrying out each such program; and

"(C) for administrative support services within the United States to carry out the purposes of this chapter, including the cost of United States personnel engaged in carrying out such purposes in the United States.

President of U.S.

"(2) Not later than August 1 of each year, the President shall transmit to the Speaker of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a complete and detailed midyear report on the activities and operations carried out under this chapter prior to such date. Such midyear report shall include, but not be limited to, the status of each agreement con-

cluded prior to such date with other countries to carry out the purposes of this chapter.".

SEC. 605. EXEMPTION FROM BAN ON INVOLVEMENT OF UNITED STATES PERSONNEL IN ARREST ACTIONS IN NARCOTICS CONTROL EFFORTS ABROAD.

Section 481(c) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new paragraph: 22 USC 2291.

"(2) Paragraph (1) of this subsection shall not prohibit officers and employees of the United States from being present during direct police arrest actions with respect to narcotic control efforts in a foreign country to the extent that the Secretary of State and the government of that country agree to such an exemption. The Secretary of State shall report any such agreement to the Congress before the agreement takes effect.". Report.

SEC. 606. ANNUAL REPORTS ON INVOLVEMENT OF FOREIGN COUNTRIES IN ILLICIT DRUG TRAFFIC.

Section 481(e) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new paragraph: 22 USC 2291.

"(6) Each report pursuant to this subsection shall describe the involvement of any foreign government (including any communist government) in illicit drug trafficking during the preceding fiscal year, including—

"(A) the direct or indirect involvement of such government (or any official thereof) in the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, and

"(B) any other activities of such government (or any official thereof) which have facilitated illicit drug trafficking.".

SEC. 607. PROCUREMENT OF WEAPONS TO DEFEND AIRCRAFT INVOLVED IN NARCOTICS CONTROL EFFORTS.

Of the funds available to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), $1,000,000 for each of the fiscal years 1986 and 1987 shall be made available to arm, for defensive purposes, aircraft used in narcotic control eradication or interdiction efforts. The Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall be notified of the use of any such funds for that purpose at least 15 days in advance in accordance with the reprogramming procedures applicable under section 634A of the Foreign Assistance Act of 1961. 22 USC 2311. *Post*, p. 278.

SEC. 608. REQUIREMENT FOR COST-SHARING IN INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAMS.

Section 482 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection: 22 USC 2291a.

"(d) Assistance may be provided under this chapter to a foreign country only if the country provides assurances to the President, and the President is satisfied, that the country will provide at least 25 percent of the costs of any narcotics control program, project, or activity for which such assistance is to be provided. The costs borne by the country may include 'in-kind' contributions.".

SEC. 609. PROHIBITION ON USE OF FOREIGN ASSISTANCE FOR REIMBURSEMENTS FOR DRUG CROP ERADICATIONS.

Chapter 8 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

22 USC 2291b.

"SEC. 483. PROHIBITION ON USE OF FOREIGN ASSISTANCE FOR REIMBURSEMENTS FOR DRUG CROP ERADICATIONS.—Funds made available to carry out this Act may not be used to reimburse persons whose illicit drug crops are eradicated.".

SEC. 610. ASSISTANCE FOR JAMAICA.

Drugs and drug abuse.
22 USC 2346.

In allocating assistance for Jamaica for fiscal year 1986 under chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund), the President shall give major consideration to whether the Government of Jamaica has prepared, presented, and committed itself to a comprehensive plan or strategy for the control and reduction of illicit cultivation, production, processing, transportation, and distribution of marijuana within a specifically stated period of time.

SEC. 611. ASSISTANCE FOR BOLIVIA.

Assistance may be provided to Bolivia for fiscal years 1986 and 1987 under chapter 2 (relating to grant military assistance), chapter 4 (relating to the economic support fund), and chapter 5 (relating to international military education and training) of part II of the Foreign Assistance Act of 1961, and under chapter 2 of the Arms Export Control Act (relating to foreign military sales financing), only under the following conditions:

22 USC 2311, 2346, 2347.
22 USC 2761.

(1) For fiscal year 1986—

Agriculture and agricultural commodities.

(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that the Government of Bolivia has enacted legislation that will establish its legal coca requirements, provide for the licensing of the number of hectares necessary to produce the legal requirement, and make unlicensed coca production illegal; and

(B) the remaining amount of such assistance may be provided at any time following a certification pursuant to subparagraph (A) if the President certifies to the Congress that the Government of Bolivia achieved the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States.

(2) For fiscal year 1987, such assistance may not be provided unless the President certifies to the Congress that the Government of Bolivia has developed a plan to eliminate illicit narcotics production countrywide and is prepared to enter into an agreement with the United States to implement that plan. If that certification is made, then—

(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that the Government of Bolivia has achieved at least half of the eradication target for the calendar year 1986 agreed to by the United States and the Government of Bolivia; and

(B) the remaining amount of such assistance may be provided at any time after the President certifies to the

Congress that the Government of Bolivia fully achieved that eradication target.

SEC. 612. ASSISTANCE TO PERU.

(a) CONDITIONS ON ASSISTANCE.—United States assistance (as defined by section 481(i)(4) of the Foreign Assistance Act of 1961) may be provided for Peru— 22 USC 2291.

(1) for fiscal year 1986, only if the President reports to the Congress that the Government of Peru has demonstrated substantial progress in developing a plan that will establish its legal coca requirements, license the number of hectares necessary to produce the legal requirement, and eliminate illicit and unlicensed coca production; and Agriculture and agricultural commodities.

(2) for fiscal year 1987, only if the President reports to the Congress that the Government of Peru has developed such a plan and is implementing it.

(b) UPPER HUALLAGA VALLEY PROJECT.—Funds authorized to be appropriated for fiscal year 1987 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (relating to development assistance) may be made available for the project of the Agency for International Development in the Upper Huallaga Valley of Peru only if the Administrator of that Agency, after consultation with the Congress, determines that a comprehensive review of that project has been completed which establishes the effectiveness of that project in reducing and eradicating coca leaf production, distribution, and marketing in the Upper Huallaga Valley. The assistance for Peru described in this subsection may be provided only if the report required by subsection (a)(2) has been submitted to the Congress. Agriculture and agricultural commodities. 22 USC 2151.

SEC. 613. REALLOCATION OF FUNDS IF CONDITIONS NOT MET.

If any of the assistance described in section 611 is not provided for Bolivia because the conditions specified in that section are not met, or if any of the assistance described in sections 612(a) is not provided for Peru because the conditions specified in that section are not met, the President shall reprogram such assistance in order to provide additional assistance to countries which have taken significant steps to halt illicit drug production or trafficking. President of U.S.

SEC. 614. CONDITIONS ON UNITED STATES CONTRIBUTIONS TO THE UNITED NATIONS FUND FOR DRUG ABUSE CONTROL.

Section 482(a) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection: 22 USC 2291a.

"(3) Funds authorized to be appropriated by this section for fiscal year 2986 and for fiscal year 1987 may be used for a contribution to the United Nations Fund for Drug Abuse Control only if that organization includes in its crop substitution projects a plan for cooperation with the law enforcement forces of the host country.".

SEC. 615. LATIN AMERICAN REGIONAL NARCOTICS CONTROL ORGANIZATION.

(a) FEASIBILITY STUDY.—The Secretary of State, with the assistance of the National Drug Enforcement Policy Board, shall conduct a study of the feasibility of establishing a regional organization in Latin America which would combat narcotics production and trafficking through regional information-sharing and a regional enforcement unit. Law enforcement.

(b) REPORT.—No later than six months after the date of enactment of this Act, a report on the advisability of encouraging the establishment of such an organization shall be submitted to the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

SEC. 616. GREATER EFFORT BY UNITED STATES ARMED FORCES TO SUPPORT NARCOTICS CONTROL EFFORTS ABROAD.

President of U.S. Report.

No later than 60 days after the date of enactment of this Act, the President shall report to the Congress on why the United States Armed Forces should not exert greater effort in facilitating and supporting interception of narcotics traffickers, and in gathering narcotics-related intelligence, outside the United States.

SEC. 617. CUBAN DRUG TRAFFICKING.

(a) FINDINGS.—The Congress finds that—

(1) the subject of the flow, use, and control of narcotic and psychotropic substances is a matter of great international importance;

(2) the problem of drug abuse and drug trafficking continues to worsen throughout most parts of the world;

(3) the concerns of the governments of many countries have become manifest in several bilateral and multilateral narcotics control projects;

(4) United Nations agencies monitor and apply controls on the flow and use of drugs and coordinate multilateral efforts to control production, trafficking, and abuse of drugs;

(5) the United Nations Fund for Drug Abuse Control funds narcotics projects throughout the world and has been a vehicle since 1971 for multilateral implementation of narcotics control and reduction programs;

(6) the International Narcotics Control Board is charged with monitoring compliance with the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, and Cuba is a party to both Conventions;

18 UST 1407, 32 UST 543.

(7) the United Nations Commission on Narcotic Drugs is responsible for formulating policies, coordinating activities, supervising the implementation of international conventions, and making recommendations to governments for international drug control;

(8) the promotion of drug abuse and participation in drug trafficking is universally considered egregious criminal behavior wherever it occurs, whether it occurs locally, nationally, or internationally;

(9) a Federal grand jury of the United States has indicted four prominent Cuban officials on charges of conspiring to smuggle drugs into the United States;

(10) United States Government officials have testified at several congressional hearings that the Government of Cuba is facilitating the flow of illicit drugs into the United States in order to obtain hard currency, support guerrilla/terrorist activities, and undermine United States society; and

(11) such alleged conduct on the part of the Government of Cuba would be injurious to the world community and counter to the general principle of international law that no country has

the right to use or permit the use of its territory in such a manner as to injure another country or persons therein.

(b) RECOMMENDED ACTIONS.—It is the sense of the Congress that the President should—

(1) acting through the Permanent Representative of the United States to the United Nations, take such steps as may be necessary to place the question of the involvement by the Government of Cuba in illicit drug trafficking on the agenda of the United Nations;

(2) acting through the Representative of the United States to the Organization of American States, request the Organization of American States to consider this question as soon as possible; and

(3) request other appropriate international organizations and international forums to consider this question.

(c) REPORT.—The President shall report to the Congress on the actions taken pursuant to this section.

SEC. 618. PROHIBITION ON ASSISTANCE TO COUNTRIES WHICH DO NOT TAKE ADEQUATE STEPS TO HALT DRUG TRAFFICKING.

Section 481(h) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new paragraph: 22 USC 2291.

"(4) In addition to the requirements applicable to major illicit drug producing countries pursuant to paragraph (1), the President shall not provide any assistance under this Act or the Arms Export Control Act to any other country which the President determines has not taken adequate steps to prevent— 22 USC 2751 note.

"(A) the processing (in whole or in part) in such country of narcotic and psychotropic drugs or other controlled substances,

"(B) the transportation through such country of narcotic and psychotropic drugs or other controlled substances, and

"(C) the use of such country as a refuge for illegal drug traffickers.".

SEC. 619. DRUG TRAFFICKING AND THE PROBLEM OF TOTAL CONFIDENTIALITY OF CERTAIN FOREIGN BANK ACCOUNTS. 22 USC 2291 note.

(a) FINDINGS.—The Congress finds that—

(1) several banks in Latin America and the Caribbean are used by narcotics traffickers as depositories for money obtained in providing illicit drugs to the United States and other countries of the region;

(2) offshore banks which provide total confidentiality provide a service which materially assists the operations of illicit drug traffickers; and

(3) cooperation in gaining access to the bank accounts of such narcotics traffickers would materially assist United States authorities in controlling the activities of such traffickers.

(b) POLICY.—The Congress—

(1) requests the President to negotiate treaties or appropriate international agreements with all countries providing confidential banking services (giving high priority to countries in the Caribbean region) to provide disclosure to the United States Government of information contained in official records, and in records of bank accounts, concerning persons under investigation for violations of United States law, in particular those regarding international drug trafficking;

(2) directs the President to include reports on the results of such efforts in the annual International Narcotics Control Strategy Report; and

(3) reaffirms its intention to obtain maximum cooperation on the part of all governments for the purpose of halting international drug trafficking, and constantly to evaluate the cooperation of those governments receiving assistance from the United States.

PUBLIC LAW 99-570 [H.R. 5484]; October 27, 1986

ANTI-DRUG ABUSE ACT OF 1986

For Legislative History of Act see Report for P.L. 99-570 in Legislative History Section, post.

An Act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Drug Abuse Act of 1986".

SEC. 2. ORGANIZATION OF ACT.

This Act is organized as follows:

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

Subtitle B—Drug Possession Penalty Act of 1986

Subtitle C—Juvenile Drug Trafficking Act of 1986

Subtitle D—Assets Forfeiture Amendments Act of 1986

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

Subtitle F—Continuing Drug Enterprise Act of 1986

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

Subtitle H—Money Laundering Control Act of 1986

Subtitle I—Armed Career Criminals

Subtitle J—Authorization of Appropriations for Drug Law Enforcement

Subtitle K—State and Local Narcotics Control Assistance

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

Subtitle M—Narcotics Traffickers Deportation Act

Subtitle N—Freedom of Information Act

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

Subtitle P—Manufacturing Operations

Subtitle Q—Controlled Substances Technical Amendments

Subtitle R—Precursor and Essential Chemical Review

Subtitle S—White House Conference for a Drug Free America

Subtitle T—Common Carrier Operation Under the Influence of Alcohol or Drugs

Subtitle U—Federal Drug Law Enforcement Agent Protection Act of 1986

TITLE II—INTERNATIONAL NARCOTICS CONTROL

TITLE III—INTERDICTION

Subtitle A--Department of Defense Drug Interdiction Assistance

Subtitle B—Customs Enforcement

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

Subtitle D—Coast Guard

Subtitle E—United States Bahamas Drug Interdiction Task Force

Subtitle F—Command, Control, Communications, and Intelligence Centers

Subtitle G—Transportation Safety

Subtitle H—Department of Justice Funds for Drug Interdiction Operation in Hawaii

Subtitle I—Federal Communications Commission

TITLE IV—DEMAND REDUCTION

Subtitle A—Treatment and Rehabilitation

Subtitle B—Drug-Free Schools and Communities Act of 1986

Subtitle C—Indians and Alaska Natives

Subtitle D—Miscellaneous Provisions

TITLE V—UNITED STATES INSULAR AREAS AND NATIONAL PARKS

Subtitle A—Programs in United States Insular Areas

Subtitle B—National Park Service Program

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

TITLE VII—NATIONAL ANTIDRUG REORGANIZATION AND COORDINATION

TITLE VIII—PRESIDENT'S MEDIA COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION

TITLE IX—DENIAL OF TRADE BENEFITS TO UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG TRANSIT COUNTRIES

TITLE X—BALLISTIC KNIFE PROHIBITION

TITLE XI—HOMELESS ELIGIBILITY CLARIFICATION ACT

Subtitle A—Emergency Food for the Homeless

Subtitle B—Job Training for the Homeless

Subtitle C—Entitlements Eligibility

TITLE XII—COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

TITLE XIII—CYANIDE WRONGFUL USE

TITLE XIV—SENATE POLICY CONCERNING FUNDING

TITLE XV—NATIONAL FOREST SYSTEM DRUG CONTROL

Subtitle H—Money Laundering Control Act of 1986

SEC. 1351. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Control Act of 1986".

SEC. 1352. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

"(A) with the intent to promote the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

"(A) with the intent to promote the carrying on of specified unlawful activity; or

"(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1), or a transportation described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the term 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

"(7) the term 'specified unlawful activity' means—

"(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 543 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), section 2 (relating to criminal penalties) of the Export Administration Act of 1979 (50 U.S.C. App. 2401), section 203 (relating to criminal sanctions) of the International Emergency Economic Powers Act (50 U.S.C. 1702), or section 3 (relating to criminal violations) of the Trading with the Enemy Act (50 U.S.C. App. 3).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

"§ 1957. Engaging in monetary transactions in property derived from specified unlawful activity

"(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

"(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

"(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

"(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

"(d) The circumstances referred to in subsection (a) are—

"(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

"(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(f) As used in this section—

"(1) the term 'monetary transaction' means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined for the purposes of subchapter II of chapter 53 of title 31) by, through, or to a financial institution (as defined in section 5312 of title 31);

"(2) the term 'criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense; and

"(3) the term 'specified unlawful activity' has the meaning given that term in section 1956 of this title.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new items:

"1956. Laundering of monetary instruments.
"1957. Engaging in monetary transactions in property derived from specified unlawful activity.".

SEC. 1353. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) CLARIFICATION OF RIGHT OF FINANCIAL INSTITUTIONS TO REPORT SUSPECTED VIOLATIONS.—Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following new sentences: "Such information may

include only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 1354. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding at the end thereof the following new section:

"§ 5324. Structuring transactions to evade reporting requirement prohibited

"No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

"(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirement prohibited.".

SEC. 1355. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS AND RELATED PROVISIONS.

(a) CUSTOMS AUTHORITY TO CONDUCT SEARCHES AT BORDER.—Section 5317(b) of title 31, United States Code, is amended to read as follows:

"(b) SEARCHES AT BORDER.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.".

(b) FAILURE TO REPORT EXPORT OR IMPORT OF MONETARY INSTRUMENT.—The first sentence of section 5317(c) of title 31, United States Code (relating to seizure and forfeiture of monetary instruments in foreign commerce) is amended to read as follows: "If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government.".

SEC. 1356. COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS.

(a) SUMMONS POWER.—Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a) GENERAL POWERS OF SECRETARY.—" before "The Secretary of the Treasury";

(2) in paragraph (1), by inserting "except as provided in subsection (b)(2)," before "delegate";

(3) by striking out "and" at the end of paragraph (2);

(4) by inserting after paragraph (2) the following new paragraphs:

"(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and";

(5) by redesignating paragraph (3) as paragraph (5); and

(6) by adding at the end the following new subsections:

"(b) LIMITATIONS ON SUMMONS POWER.—

"(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

"(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

"(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

"(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

"(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

"(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

"(e) CONTUMACY OR REFUSAL.—

"(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

"(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

"(A) the investigation which gave rise to the summons is being or has been carried on;

"(B) the person summoned is an inhabitant; or

"(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

"(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

"(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.".

(b) AMENDMENT RELATING TO EXEMPTIONS GRANTED FOR MONETARY TRANSACTION REPORTING REQUIREMENTS.—Section 5318 of title 31, United States Code, is amended by adding after subsection (e) (as added by subsection (a) of this section) the following new subsection:

"(f) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution prepares and maintains a statement which—

"(1) describes in detail the reasons why such person is qualified for such exemption; and

"(2) contains the signature of such person.".

(c) CONFORMING AMENDMENTS.—

(1) Sections 5321 and 5322 of title 31, United States Code, are each amended by striking out "5318(2)" each place such term appears and inserting in lieu thereof "5318(a)(2)".

(2) The heading of section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by striking out the item relating to section 5318 and inserting in lieu thereof the following:

"5318. Compliance, exemptions, and summons authority.".

SEC. 1357. PENALTY PROVISIONS.

(a) CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION.—Section 5321(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) STRUCTURED TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5324.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

"(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed.".

(b) INCREASE IN AMOUNT OF PENALTY FOR FINANCIAL INSTITUTIONS.—Section 5321(a)(1) of title 31, United States Code, is amended—

(1) by striking out "$10,000" and inserting in lieu thereof "the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000"; and

(2) by striking out "section 5315" each place such term appears and inserting in lieu thereof "sections 5314 and 5315".

(c) SEPARATE CIVIL MONEY PENALTY FOR VIOLATION OF SECTION 5314.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (4) (as added by subsection (a) of this section) the following new paragraph:

"(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5314.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

"(i) in the case of violation of such section involving a transaction, the greater of—

"(I) the amount (not to exceed $100,000) of the transaction; or

"(II) $25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

"(I) an amount (not to exceed $100,000) equal to the balance in the account at the time of the violation; or

"(II) $25,000.".

(d) SEPARATE CIVIL MONEY PENALTY FOR NEGLIGENT VIOLATION OF SUBCHAPTER.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (5) (as added by subsection (d) of this section) the following new paragraph:

"(6) NEGLIGENCE.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.".

(e) EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY.—Section 5321(b) of title 31, United States Code, is amended to read as follows:

"(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

"(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

"(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

"(A) the date the penalty was assessed; or

"(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.".

(f) CLARIFICATION OF RELATIONSHIP BETWEEN CIVIL PENALTY AND CRIMINAL PENALTY.—Section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) CRIMINAL PENALTY NOT EXCLUSIVE OF CIVIL PENALTY.—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.".

(g) AMENDMENTS TO CRIMINAL PENALTY FOR CERTAIN OFFENSES.—Section 5322(b) of title 31, United States Code, is amended—

(1) by striking out "illegal activity involving transactions of" and inserting in lieu thereof "any illegal activity involving"; and

(2) by striking out "5 years" and inserting in lieu thereof "10 years".

(h) CONFORMING AMENDMENT.—Section 5321(c) of title 31, United States Code, is amended by striking out "section 5317(b)" and inserting in lieu thereof "subsection (c) or (d) of section 5317".

SEC. 1358. MONETARY TRANSACTION REPORTING AMENDMENTS.

(a) CLOSELY RELATED EVENTS.—Section 5316 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(d) CUMULATION OF CLOSELY RELATED EVENTS.—The Secretary of the Treasury may prescribe regulations under this section defining the term 'at one time' for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).".

(b) INCHOATE OFFENSE.—Section 5316(a)(1) of title 31, United States Code, is amended—

(1) by striking out "or attempts to transport or have transported,", and

(2) by inserting ", is about to transport," after "transports".

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 5316(a)(2) of title 31, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1359. BANKING REGULATORY AGENCY SUPERVISION OF RECORDKEEPING SYSTEMS.

(a) INSURED BANKS.—

(1) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured banks to establish and maintain procedures reasonably designed to assure and monitor the compliance of such banks with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF BANK TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured bank by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured bank.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured bank—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such bank which was previously reported to the bank by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such bank to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 8(i)(2)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)(i)) is amended by striking out "subsection (b) or (c)" and inserting in lieu thereof "subsection (b), (c), or (s)".

(b) INSTITUTIONS REGULATED BY THE BANK BOARD.—

(1) IN GENERAL.—Section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) is amended by adding at the end thereof the following new paragraph:

"(16) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(A) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(B) EXAMINATIONS OF ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(i) IN GENERAL.—Each examination of an association by the Board shall include a review of the procedures required to be established and maintained under subparagraph (A).

"(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

"(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an association—

"(i) has failed to establish and maintain the procedures described in subparagraph (A); or

"(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Board,

the Board shall issue an order in the manner prescribed in paragraph (2) or (3) requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 5(d)(8)(B)(i) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(8)(B)(i)) is amended by striking out "paragraph (2) or (3)" and inserting in lieu thereof "paragraph (2), (3), or (16)".

(c) INSURED THRIFT INSTITUTIONS.—

(1) IN GENERAL.—Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Corporation shall prescribe regulations requiring insured institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF INSTITUTIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured institution by the Corporation shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured institution.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Corporation determines that an insured institution—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such institution which was previously reported to the institution by the Corporation,

the Corporation shall issue an order in the manner prescribed in subsection (e) or (f) requiring such institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 407(k)(3)(A) of the National Housing Act (12 U.S.C. 1730(k)(3)(A)) is amended by striking out "subsection (e) or (f) of this section shall forefit" and inserting in lieu thereof "subsection (e), (f), or (s) of this section shall forfeit".

(d) INSURED CREDIT UNIONS.—

(1) IN GENERAL.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following new subsection:

"(q) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF CREDIT UNIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the credit union.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an insured credit union—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 206(k)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)(A)) (as in effect on September 1, 1986) is amended by strikin; out "subsection (e) or (f)" and inserting in lieu thereof "subsection (e), (f), or (q)".

SEC. 1360. CHANGE IN BANK CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof ", or, in the discretion of the agency, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended

not to exceed 2 additional times for not more than 45 days each time if—

"(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the agency's judgment, any material information submitted is substantially inaccurate;

"(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) NOTICE TO STATE AGENCY.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.".

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

"(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, within a reasonable period of time—

"(i) publish the name of the insured bank proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.".

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) by redesignating paragraphs (15) and (16) as paragraphs (16) and (17), respectively; and

(2) by inserting after paragraph (14) the following new paragraph:

"(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 1361. CHANGE IN SAVINGS AND LOAN CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof "or, in the discretion of the Corporation, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the Corporation determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the Corporation's judgment, any material information submitted is substantially inaccurate;

"(C) the Corporation has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the Corporation determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) NOTICE TO STATE AGENCY.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the Corporation shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) REPORT.—The Corporation shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The Corporation shall retain such written report as a record of the Corporation.".

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

"(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the Corporation shall, within a reasonable period of time—

"(i) publish the name of the insured institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the institution proposed to be acquired is located, before final consideration of such notice by the Corporation,

unless the Corporation determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such institution.".

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 407(q) of the National Housing Act (12 U.S.C. 1730(q)) is amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18), respectively; and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The Corporation may exercise any authority vested in the Corporation under paragraph (2) or (3) of subsection (m) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the Corporation, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the Corporation that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the Corporation under subparagraph (A) as such courts have under paragraph (2) or (3) of subsection (m).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 1362. AMENDMENTS TO DEFINITIONS.

(a) UNITED STATES AGENCIES INCLUDES THE POSTAL SERVICE.—Section 5312(a)(2)(U) of title 31, United States Code (defining financial institutions) (as redesignated by subsection (a)) is amended by inserting before the semicolon at the end the following: ", including the United States Postal Service".

(b) UNITED STATES INCLUDES CERTAIN TERRITORIES AND POSSESSIONS.—Section 5312(a)(5) of title 31, United States Code, is amended by inserting "the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands," after "Puerto Rico".

SEC. 1363. INTERNATIONAL INFORMATION EXCHANGE SYSTEM; STUDY OF FOREIGN BRANCHES OF DOMESTIC INSTITUTIONS.

(a) DISCUSSIONS ON INTERNATIONAL INFORMATION EXCHANGE SYSTEM.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, shall initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to assist the efforts of each

participating country to eliminate the international flow of money derived from illicit drug operations and other criminal activities.

(b) REPORT ON DISCUSSIONS REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of discussions initiated pursuant to subsection (a).

(c) STUDY OF MONEY LAUNDERING THROUGH FOREIGN BRANCHES OF DOMESTIC FINANCIAL INSTITUTIONS REQUIRED.—The Secretary of the Treasury, in consultation with the Attorney General and the Board of Governors of the Federal Reserve System, shall conduct a study of—

(1) the extent to which foreign branches of domestic institutions are used—

(A) to facilitate illicit transfers of coins, currency, and other monetary instruments (as such term is defined in section 5312(a)(3) of title 31, United States Code) into and out of the United States; and

(B) to evade reporting requirements with respect to any transfer of coins, currency, and other monetary instruments (as so defined) into and out of the United States;

(2) the extent to which the law of the United States is applicable to the activities of such foreign branches; and

(3) methods for obtaining the cooperation of the country in which any such foreign branch is located for purposes of enforcing the law of the United States with respect to transfers, and reports on transfers, of such monetary instruments into and out of the United States.

(d) REPORT ON STUDY OF FOREIGN BRANCHES REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate on the results of the study conducted pursuant to subsection (c).

SEC. 1364. EFFECTIVE DATES.

(a) The amendment made by section 1354 shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act.

(b) The amendments made by sections 1355(b) and 1357(a) shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act.

(c) The amendments made by section 1357 (other than subsection (a) of such section) shall apply with respect to violations committed after the date of the enactment of this Act.

(d) Any regulation prescribed under the amendments made by section 1358 shall apply with respect to transactions completed after the effective date of such regulation.

(e) The regulations required to be prescribed under the amendments made by section 1359 shall take effect at the end of the 3-month period beginning on the date of the enactment of this Act.

(f) The amendments made by sections 1360 and 1361 shall apply with respect to notices of proposed acquisitions filed after the date of the enactment of this Act.

SEC. 1365. PREDICATE OFFENSES.

(a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title.".

(b) Subsection (1) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (1) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (prohibition of relating to business enterprises of gambling),".

SEC. 1366. FORFEITURE.

(a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.
"981. Civil Forfeiture.
"982. Criminal Forfeiture.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 or 1957 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(C) Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or

forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer, or employee thereof.

"(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or emission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

"(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall, to the extent provided by treaty, apply:

"(1) Notwithstanding any other provision of law, except section 3 of the Anti Drug Abuse Act of 1986, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may, with the concurrence of the Secretary of State, equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled

Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set. Transfers may be made under this subsection during a fiscal year to a country that is subject to paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961 (relating to restrictions on United States assistance) only if there is a certification in effect with respect to that country for that fiscal year under paragraph (2) of that section.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(j) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 or 1957 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)—(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following:

"46. Forfeiture ..... 981".

SEC. 1367. SEVERABILITY CLAUSE.

If any provision of this subtitle or any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and their application, shall not be affected thereby.

TITLE II—INTERNATIONAL NARCOTICS CONTROL

SEC. 2001. SHORT TITLE.

This title may be cited as the "International Narcotics Control Act of 1986".

SEC. 2002. ADDITIONAL FUNDING FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE AND REGIONAL COOPERATION.

Section 482(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291a(a)(1); authorizing appropriations for assistance for international narcotics control) is amended—

(1) by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$75,445,000 for the fiscal year 1987"; and

(2) by adding at the end the following: "In addition to the amounts authorized by the preceding sentence, there are authorized to be appropriated to the President $45,000,000 for the fiscal year 1987 to carry out the purposes of section 481, except that funds may be appropriated pursuant to this additional authorization only if the President has submitted to the Congress a detailed plan for the expenditure of those funds, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds. Of the funds authorized to be appropriated by the preceding sentence, not less that $10,000,000 shall be available only to provide helicopters or other aircraft to countries receiving assistance for fiscal year 1987 under this chapter. These funds shall be used primarily for aircraft which will be based in Latin America for use for narcotics control eradication and interdiction efforts throughout the region. These aircraft shall be used solely for narcotics control, eradication, and interdiction efforts.".

SEC. 2003. AIRCRAFT PROVIDED TO FOREIGN COUNTRIES FOR NARCOTICS CONTROL PURPOSES; RETENTION OF TITLE AND RECORDS OF USE.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program) is amended by adding at the end the following new sections:

"SEC. 484. RETENTION OF TITLE TO AIRCRAFT.

"Any aircraft which, at any time after the enactment of this section, are made available to a foreign country under this chapter, or are made available to a foreign country primarily for narcotics-related purposes under any other provision of law, shall be provided only on a lease or loan basis.

"SEC. 485. RECORDS OF AIRCRAFT USE.

"(a) REQUIREMENT TO MAINTAIN RECORDS.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to a foreign country under this chapter, including aircraft made available before the enactment of this section.

"(b) CONGRESSIONAL ACCESS TO RECORDS.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.".

SEC. 2004. PILOT AND AIRCRAFT MAINTENANCE TRAINING FOR NARCOTICS CONTROL ACTIVITIES.

(a) EARMARKING OF FUNDS.—Not less than $2,000,000 of the funds made available for fiscal year 1987 to carry out chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.; relating to international military education and training) shall be available only for education and training in the operation and maintenance of aircraft used in narcotics control interdiction and eradication efforts.

(b) RELATIONSHIP TO INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.—Assistance under this section shall be coordinated with assistance provided under chapter 8 of part I of that Act (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(c) WAIVER OF SECTION 660.—Assistance may be provided pursuant to this section notwithstanding the prohibition contained in section 660 of the Foreign Assistance Act of 1961 (22 U.S.C. 2420; relating to police training).

SEC. 2005. RESTRICTIONS OF THE PROVISION OF UNITED STATES ASSISTANCE.

(a) RESTRICTIONS.—Section 481(h) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(h)(1) Subject to paragraph (2), for every major illicit drug producing country or major drug-transit country—

"(A) 50 percent of United States assistance allocated for such country notified to Congress in the report required under section 653(a) of this Act shall be withheld from obligation and expenditure; and

"(B) on or after March 1, 1987, and on March 1 of each succeeding year, the Secretary of the Treasury shall instruct the United States Executive Director of the International Bank

for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, and the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of their respective institution to or for such country.

"(2)(A) The assistance withheld by paragraph (1)(A) may be obligated and expended and the provisions of paragraph (1)(B) shall not apply if the President determines, and so certifies to the Congress, at the time of the submission of the report required by subsection (e), that—

"(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; or

"(ii) for a country that would not otherwise qualify for certification under subclause (i), the vital national interests of the United States require the provision of such assistance, or

"(B) If the President makes a certification pursuant to clause (A)(ii), he shall include in such certification—

"(i) a full and complete description of the vital national interests placed at risk should assistance, or financing not be provided such country; and

"(ii) a statement weighing the risk described in subclause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combatting narcotics or to take adequate steps to combat narcotics on its own.

"(3) In making the certification required by paragraph (2) of this subsection, the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4). The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

"(i) the enactment and enforcement of laws prohibiting such conduct, and

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(4)(A) The provisions of paragraph (1) shall apply without regard to paragraph (2) if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (2), joint resolution disapproving the determination of the President contained in such certification.

"(B)(i) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(ii) For the purpose of expediting the consideration and enactment of joint resolution under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5) Any country for which the President has not made a certification under paragraph (2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive United States assistance as defined by subsection (i)(4) of this section or the financing described in paragraph (1)(B) of this subsection unless—

"(A) the President makes a certification under paragraph (2) and the Congress does not enact a joint resolution of disapproval; or

"(B) the President submits at any other time a certification of the matters described in paragraph (2) with respect to such country and the Congress enacts, in accordance with the procedures of paragraph (4), a joint resolution approving such certification.".

(b) REPORTING DATE.—Section 481(e) of such Act is amended by striking out "February" and inserting in lieu thereof "March".

(c) DEFINITION.—Section 481(i) of such Act is amended—

"(1) by striking out "and" at the end of paragraph (3);

"(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

"(3) by adding at the end thereof the following new paragraph:

"(5) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government.".

(d) CHILD SURVIVAL FUND.—Section 481(i)(4) of such Act is amended by striking out "or (vi)" and inserting in lieu thereof "(vi) assistance from the Child Survival Fund under section 1049(c)(2) of this Act, or (vii)".

SEC. 2006. DEVELOPMENT OF HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $1,000,000 of the funds made available for fiscal year 1987 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control) to finance research on and the development and testing of safe and effective herbicides for use in the aerial eradication of coca.

SEC. 2007. REVIEW OF EFFECTIVENESS OF INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.

(a) REQUIREMENT FOR INVESTIGATION.—The Comptroller General shall conduct a thorough and complete investigation to determine the effectiveness of the assistance provided pursuant to chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(b) REPORTS TO CONGRESS.—

(1) PERIODIC REPORTS.—The Comptroller General shall report to the Congress periodically as the various portions of the investigation conducted pursuant to subsection (a) are completed.

(2) FINAL REPORT.—Not later than March 1, 1988, the Comptroller General shall submit a final report to the Congress on the results of the investigation. This report shall include such recommendations for administrative or legislative action as the Comptroller General finds appropriate based on the investigation.

SEC. 2008. EXTRADITION TO THE UNITED STATES FOR NARCOTICS-RELATED OFFENSES.

Section 481(e)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(3); relating to the annual international narcotics control report) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and, where appropriate, a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses.".

SEC. 2009. FOREIGN POLICE ARREST ACTIONS.

Section 481(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(c); commonly known as the Mansfield amendment) is amended to read as follows:

"(c)(1) No officer or employee of the United States may directly effect an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts, notwithstanding any other provision of law. This paragraph does not prohibit an officer or employee from assisting foreign officers who are effecting an arrest.

"(2) Unless the Secretary of State, in consultation with the Attorney General, has determined that the application of this paragraph with respect to that foreign country would be harmful to the national interests of the United States, no officer or employee of the United States may engage or participate in any direct police arrest action in a foreign country with respect to narcotics control efforts, notwithstanding any other provision of law. Nothing in paragraph

(1) shall be construed to allow United States officers or employees to engage or participate in activities prohibited by this paragraph in a country with respect to which this paragraph applies.

"(3) Paragraphs (1) and (2) do not prohibit an officer or employee from taking direct action to protect life or safety if exigent circumstances arise which are unanticipated and which pose an immediate threat to United States officers or employees, officers or employees of a foreign government, or members of the public.

"(4) With the agreement of a foreign country, paragraphs (1) and (2) shall not apply with respect to maritime law enforcement operations in the territorial sea of that country.

"(5) No officer or employee of the United States may interrogate or be present during the interrogation of any United States person arrested in any foreign country with respect to narcotics control efforts without the written consent of such person.

"(6) This subsection shall not apply to the activities of the United States Armed Forces in carrying out their responsibilities under applicable Status of Forces arrangements.".

SEC. 2010. ISSUANCE OF DIPLOMATIC PASSPORTS FOR DRUG ENFORCEMENT ADMINISTRATION AGENTS ABROAD.

The Congress commends the decision of the Secretary of State to issue diplomatic passports, rather than official passports, to officials and employees of the Drug Enforcement Administration who are assigned abroad. The Secretary shall report to the Congress before making any change in this policy.

SEC. 2011. INFORMATION-SHARING SO THAT VISAS ARE DENIED TO DRUG TRAFFICKERS.

(a) NEED FOR COMPREHENSIVE INFORMATION SYSTEM.—The Congress is concerned that the executive branch has not established a comprehensive information system on all drug arrests of foreign nationals in the United States so that information may be communicated to the appropriate United States embassies, even though the establishment of such a system is required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987.

(b) ESTABLISHMENT OF SYSTEM.—The executive branch shall act expeditiously to establish the comprehensive information system required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and submit to the Congress a report that the system has been established.

SEC. 2012. CONDITIONS ON ASSISTANCE FOR BOLIVIA.

(a) OPERATION BLAST FURNACE.—(1) It is the sense of the Congress that—

(A) the Government of Bolivia's recent drug interdiction operations in cooperation with the United States (Operation Blast Furnace) evinced a determination to combat the growing power of the narcotics trade and narcotics traffickers;

(B) the operation has had a dramatic effect on the coca trade in that country by dropping the price of coca below the cost of production;

(C) as a result of this operation the coca trade has in the short term been sharply constricted;

(D) the restoration of non-coca dependent economic growth in Bolivia is crucial to the achievement of long-term progress in controlling illicit narcotics production; and

(E) control of illicit drug production is crucial to the survival of democratic institutions and democratic government in Bolivia.

(2) The Congress, therefore, applauds the demonstrated willingness of the Paz Estenssoro government, despite the risks of severe domestic criticism and disruptive economic consequences, to cooperate with the United States in Operation Blast Furnace.

(b) CONDITIONS ON ASSISTANCE.—Paragraph (2) of section 611 of the International Security and Development Cooperation Act of 1985 is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) up to 50 percent of the aggregate amounts of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has cooperated with the United States in such operations; and

"(B) the remaining amount of such assistance may be provided at any time after the President certifies to the Congress that Bolivia has either met in calendar year 1986 the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States or has entered into an agreement of cooperation with the United States for implementing that plan for 1987 and beyond (including numerical eradication targets) and is making substantial progress toward the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance.

In the certification required by subparagraph (B), the President shall explain why the terms of the 1983 agreement proved unattainable and the reasons why a new agreement was necessary.".

(c) RELATION TO OTHER PROVISIONS.—Nothing in the amendment made by subsection (b) shall be construed as superseding any provision of section 481 of the Foreign Assistance Act of 1961.

SEC. 2013. REPORTS AND RESTRICTIONS CONCERNING CERTAIN COUNTRIES.

(a) REPORTS.—Not later than 6 months after the date of enactment of this Act and every 6 months thereafter, the President shall prepare and transmit to the Congress a report—

(1) listing each major illicit drug producing country and each major drug-transit country—

(A) which, as a matter of government policy, encourages or facilitates the production or distribution of illegal drugs;

(B) in which any senior official of the government of such country engages in, encourages, or facilitates the production or distribution of illegal drugs;

(C) in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has suffered or been threatened with violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof; or

(D) which, having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement

agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country; and

(2) describing for each country listed under paragraph (1) the activities and identities of officials whose activities caused such country to be so listed.

(b) RESTRICTIONS.—No United States assistance may be furnished to any country listed under subsection (a)(1), and the United States representative to any multilateral development bank shall vote to oppose any loan or other use of the funds of such bank for the benefit of any country listed under subsection (a)(1), unless the President certifies to the Congress that—

(1) overriding vital national interests require that provision of such assistance;

(2) such assistance would improve the prospects for cooperation with such country in halting the flow of illegal drugs; and

(3) the government of such country has made bona fide efforts to investigate and prosecute appropriate charges for any crime described in subsection (a)(1)(C) which may have been committed in such country.

(c) RELATION TO OTHER PROVISIONS.—The restrictions contained in subsection (b) are in addition to the restrictions contained in section 481(h) of the Foreign Assistance Act of 1961 or any other provision of law.

(d) DEFINITIONS.—For purposes of this section, the terms "major illicit drug producing country", "major drug-transit country", and "United States assistance" have the same meaning as is given to those terms by section 481(i) of the Foreign Assistance Act of 1961.

SEC. 2014. COMBATING NARCOTERRORISM.

(a) FINDING.—The Congress finds that the increased cooperation and collaboration between narcotics traffickers and terrorist groups constitutes a serious threat to United States national security interests and to the political stability of numerous other countries, particularly in Latin America.

(b) IMPROVED CAPABILITY FOR RESPONDING TO NARCOTERRORISM.—The President shall take concrete steps to improve the capability of the executive branch—

(1) to collect information concerning the links between narcotics traffickers and the acts of terrorism abroad, and

(2) to develop an effective and coordinated means for responding to the threat which those links pose.

Not later than 90 days after the date of enactment of this Act, the President shall report to the Congress on the steps taken pursuant to this subsection.

(c) ADMINISTRATION OF JUSTICE PROGRAM.—Of the amounts made available for fiscal year 1987 to carry out section 534 of the Foreign Assistance Act of 1961 (22 U.S.C. 2346c; relating to the administration of justice program), funds may be used to provide to Colombia or other countries in the region such assistance as they may request for protection of judicial or other officials who are targets of narcoterrorist attacks.

(d) REWARD CONCERNING JORGE LUIS OCHOA VASQUEZ.—It is the sense of the Congress that the authority of section 36(b) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708(b)), as amended by section 502(a) of the Omnibus Diplomatic Security and

Antiterrorism Act of 1986 (Public Law 99-399; enacted August 27, 1986), should be used expeditiously to establish a reward of up to $500,000 for information leading to the arrest or conviction of Jorge Luis Ochoa Vasquez for narcotics-related offenses.

SEC. 2015. INTERDICTION PROCEDURES FOR VESSELS OF FOREIGN REGISTRY.

(a) FINDINGS.—The Congress finds that—

(1) the interdiction by the United States Coast Guard of vessels suspected for carrying illicit narcotics can be a difficult procedure when the vessel is of foreign registry and is located beyond the customs waters of the United States;

(2) before boarding and inspecting such a vessel, the Coast Guard must obtain consent from either the master of the vessel or the country of registry; and

(3) this process, and obtaining the consent of the country of registry to further law enforcement action, may delay the interdiction of the vessel by 3 or 4 days.

(b) NEGOTIATIONS CONCERNING INTERDICTION PROCEDURES.—

(1) The Congress urges the Secretary of State, in consultation with the Secretary of the department in which the Coast Guard is operating, to increase effects to negotiate with relevant countries procedures which will facilitate interdiction of vessels suspected of carrying illicit narcotics.

(2) If a country refuses to negotiate with respect to interdiction procedures, the President shall take appropriate actions directed against that country, which may include the denial of access to United States ports to vessels registered in that country.

(3) The Secretary of State shall submit reports to the Congress semiannually identifying those countries which have failed to negotiate with respect to interdiction procedures.

SEC. 2016. ASSESSMENT OF NARCOTICS TRAFFICKING FROM AFRICA.

The President shall direct that an updated threat assessment of narcotics trafficking from Africa be prepared. If it is determined that an increased threat exists, the assessment shall examine the need for the United States to provide increased narcotics control training for African countries.

SEC. 2017. POLICY TOWARD MULTILATERAL DEVELOPMENT BANKS.

Section 481(a) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) In order to promote international cooperation in combatting international trafficking in illicit narcotics, it shall be the policy of the United States to use its voice and vote in multilateral development banks to promote the development and implementation in the major illicit drug producing countries of programs for the reduction and eventual eradication of narcotic drugs and other controlled substances, including appropriate assistance in conjunction with effective programs of illicit crop eradication.".

SEC. 2018. MULTILATERAL DEVELOPMENT BANK ASSISTANCE FOR DRUG ERADICATION AND CROP SUBSTITUTION PROGRAMS.

(a) MDB ASSISTANCE FOR DEVELOPMENT AND IMPLEMENTATION OF DRUG ERADICATION PROGRAM.—The Secretary of the Treasury shall

instruct the United States Executive Directors of the multilateral development banks to initiate discussions with other Directors of their respective banks and to propose that all possible assistance be provided to each major illicit drug producing country for the development and implementation of a drug eradication program, including technical assistance, assistance in conducting feasibility studies and economic analyses, and assistance for alternate economic activities.

(b) INCREASES IN MULTILATERAL DEVELOPMENT BANK LENDING FOR CROP SUBSTITUTION PROJECTS.—The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to initiate discussions with other Directors of their respective banks and to propose that each such bank increase the amount of lending by such bank for crop substitution programs which will provide an economic alternative for the cultivation or production of illicit narcotic drugs or other controlled substances in major illicit drug producing countries, to the extent such countries develop and maintain adequate drug eradication programs.

(c) NATIONAL ADVISORY COUNCIL REPORT.—The Secretary of the Treasury shall include in the annual report to the Congress by the National Advisory Council on International Monetary and Financial Policies a detailed accounting of the manner in which and the extent to which the provisions of this section have been carried out.

(d) DEFINITIONS.—For purposes of this section—

(1) MULTILATERAL DEVELOPMENT BANK.—The term "multilateral development bank" means the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the African Development Bank, and the Asian Development Bank.

(2) MAJOR ILLICIT DRUG PRODUCING COUNTRY.—The term "major illicit drug producing country" has the meaning provided in section 481(i)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(2)).

(3) NARCOTIC DRUG AND CONTROLLED SUBSTANCE.—The terms "narcotic drug" and "controlled substance" have the meanings given to such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 2019. DRUGS AS A NATIONAL SECURITY PROBLEM.

The Congress hereby declares that drugs are a national security problem and urges the President to explore the possibility of engaging such essentially security-oriented organizations as the North Atlantic Treaty Organization in cooperative drug programs.

SEC. 2020. FINDINGS CONCERNING GREATER INTERNATIONAL EFFORT TO ADDRESS DRUG THREAT.

The Congress finds that—

(1) in response to the growing narcotics threat to the international community—

(A) the Single Convention on Narcotic Drugs, 1961, the 1972 Protocol amending that Convention, and the Convention on Psychotropic Substances were adopted under United Nations auspices, and

(B) the United Nations has created various entities to deal with drug abuse control and prevention; and

(2) a greater international effort is required to address this threat, such as additional or increased contributions by other

countries to the United Nations Fund for Drug Abuse and Control and greater coordination of enforcement and eradication efforts.

SEC. 2021. INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING.

(a) CONGRESSIONAL SUPPORT.—The Congress hereby declares its support for United Nations General Assembly Resolution 40/122 adopted on December 13, 1985, in which the General Assembly decided to convene in 1987, an International Conference on Drug Abuse and Illicit Trafficking in order to generate universal action to combat the drug problem in all its forms at the national, regional, and international levels, and to adopt a comprehensive outline of future activities.

(b) UNITED STATES PARTICIPATION.—With respect to United States participation in the International Conference on Drug Abuse and Illicit Trafficking, the Congress calls on the President—

(1) to appoint the head of the United States delegation well in advance of the conference; and

(2) to ensure that necessary resources are available for United States preparation and participation.

(c) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress on the status of United States preparations for the International Conference on Drug Abuse and Illicit Trafficking, incuding the status of naming the delegation, the issues expected to arise, and United States policy initiatives to be taken at the conference.

SEC. 2022. EFFECTIVENESS OF INTERNATIONAL DRUG PREVENTION AND CONTROL SYSTEM.

(a) STUDY.—The United States should seek to improve the program and budget effectiveness of United Nations entities related to narcotics prevention and control by studying the capability of existing United Nations drug-related declarations, conventions, and entities to heighten international awareness and promote the necessary strategies for international action, to strengthen international cooperation, and to make effective use of available United Nations funds.

(b) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress any recommendations that may result from this study.

SEC. 2023. NARCOTICS CONTROL CONVENTIONS.

The Congress—

(1) urges that the United Nations Commission on Narcotic Drugs complete work as quickly as possible, consistent with the objective of obtaining an effective agreement, on a new draft convention against illicit traffic in narcotic drugs and psychotropic substances, in accordance with the mandate given the Commission by United Nations General Assembly Resolution 39/141; and

(2) calls for more effective implementation of existing conventions relating to narcotics.

SEC. 2024. MEXICO-UNITED STATES INTERGOVERNMENTAL COMMISSION.

(a) NEGOTIATIONS TO ESTABLISH.—In accordance with the resolution adopted by the 26th Mexico-United States Interparliamentary

Conference which recommended that the Government of Mexico and the Government of the United States establish a Mexico-United States Intergovernmental Commission on Narcotics and Psychotropic Drug Abuse and Control, the President should direct the Secretary of State, in conjunction with the National Drug Enforcement Policy Board, to enter into negotiations with the Government of Mexico to create such a joint intergovernmental commission.

(b) MEMBERSHIP.—The commission, which should meet semiannually, should include members of the Mexican Senate and Chamber of Deputies and the United States House of Representatives and Senate, together with members of the Executive departments of each Government responsible for drug abuse, education, prevention, treatment, and law enforcement.

(c) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Secretary of State shall report to the Congress on the progress being made in establishing a commission in accordance with subsection (a).

SEC. 2025. OPIUM PRODUCTION IN PAKISTAN.

(a) FINDINGS.—The Congress finds that—

(1) the production of opium in Pakistan is expected to more than double in the 1985-1986 growing season, posing an increased threat to the health and welfare of the people of Pakistan and the people of the United States; and

(2) despite past achievements, the current eradication program in Pakistan, which employs manual eradication of opium poppies, has proven inadequate to meet this new challenge.

(b) NEED FOR MORE EFFECTIVE DRUG CONTROL PROGRAM.—The Congress urges that the Government of Pakistan adopt and implement a comprehensive narcotics control program which would provide for more effective prosecution of drug traffickers, increased interdiction, and aerial eradication of opium poppies.

(c) REPORT TO CONGRESS.—The Secretary of State shall report to the Congress not later than 60 days after the date of enactment of this Act with Respect to the adoption and implementation by the Government of Pakistan of a comprehensive narcotics control program in accordance with subsection (b).

SEC. 2026. OPIUM PRODUCTION IN IRAN, AFGHANISTAN, AND LAOS.

The Congress calls on the President to instruct the United States Ambassador to the United Nations to request that the United Nations Secretary General raise with delegations to the International Conference on Drug Abuse and Illicit Trafficking the problem of illicit drug production in Iran, Afghanistan, and Laos, the largest opium poppy producing countries which do not have narcotics control programs.

SEC. 2027. INCREASED FUNDING FOR USIA DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated for the United States Information Agency for fiscal year 1987 $2,000,000 which shall be available only for increasing drug education programs abroad. These programs may include—

(1) the distribution of films and publications which demonstrate the impact of drugs on crime and health; and

(2) exchange of persons programs and international visitor programs involving students, educators, and scientists.

SEC. 2028. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the President for fiscal year 1987 $3,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, which amount shall be pursuant to section 126(b)(2) of that Act for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

SEC. 2029. REPORTS TO CONGRESS ON DRUG EDUCATION PROGRAMS ABROAD.

The Director of the United States Information Agency and the Administrator of the Agency for International Development shall include in their annual reports to the Congress a description of the drug education programs carried out by their respective agencies

SEC. 2030. NARCOTICS CONTROL EFFORTS IN MEXICO.

(a) CONGRESSIONAL FINDINGS.—The Congress finds—

(1) in their meeting in August 1986, President de la Madrid Hurtado and President Reagan recognized the unique relationship between our two countries and the importance and the desire to respect the sovereignty of each nation;

(2) further, the United States government has actively worked to support the Mexican government in easing its international debt burden;

(3) both Presidents pledged their cooperation in drug eradication, enforcement and education;

(4) this pledge of cooperation has not been realized fully because of the inadequate response of the Mexican government in:

(A) fully investigating the 1985 murders of U.S. Drug Enforcement Administration agent Enrique Camarena Salazar and his pilot, Alfredo Zavala Avelar;

(B) fully investigating the 1986 detention and torture of U.S. Drug Enforcement Administration agent Victor Cortez, Junior;

(C) bringing to trial and effectively prosecuting those responsible for the Camarena and Zavala murders and those responsible for the detention and torture of Cortez;

(D) using effectively and efficiently the fleet of aircraft provided by the United States government for drug eradication and interdiction; and

(E) preventing drug trafficking and drug-related violence on the United States-Mexican border.

(b) MEASURES TO BE CONSIDERED.—Therefore, it is the sense of Congress that unless substantial progress is demonstrated in the near future on the issues described in subsection (A)(4), the President should consider taking one or more of the following measures:

(1) imposition of a mandatory travel advisory for all of Mexico;

(2) restrictions on foreign assistance (including further disbursements from the Exchange Stabilization Fund and Federal Reserve Bank);

(3) denial of favorable tariff treatment for Mexican products;

(4) denial of favorable U.S. votes in multilateral development banks.

(c) PROSECUTION OF THOSE RESPONSIBLE FOR THE TORTURE AND MURDER OF DEA AGENTS.—Of the funds allocated for assistance for Mexico for fiscal year 1987 under chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control), $1,000,000 shall be withheld from expenditure until the President reports to the Congress that the Government of Mexico—

(1) has fully investigated the 1985 murders of Drug Enforcement Administration agent Enrique Camarena Salazar and his pilot Alfredo Zavala Avelar;

(2) has fully investigated the 1986 detention and torture of Drug Enforcement Administration agent Victor Cortez, Junior; and

(3) has brought to trial and is effectively prosecuting those responsible for those murders and those responsible for that detention and torture.

NATIONAL DRUG INTERDICTION IMPROVEMENT ACT OF 1986

TITLE III—INTERDICTION

SEC. 3001. SHORT TITLE.

This title may be cited as the "National Drug Interdiction Improvement Act of 1986".

SEC. 3002. FINDINGS.

The Congress hereby finds that—

(1) a balanced, coordinated, multifaceted strategy for combating the growing drug abuse and drug trafficking problem in the United States is essential in order to stop the flow and abuse of drugs within our borders;

(2) a balanced, coordinated, multifaceted strategy for combating the narcotics drug abuse and trafficking in the United States should include—

(A) increased investigations of large networks of drug smuggler organizations;

(B) source country drug eradication;

(C) increased emphasis on stopping narcotics traffickers in countries through which drugs are transshipped;

(D) increased emphasis on drug education programs in the schools and workplace;

(E) increased Federal Government assistance to State and local agencies, civic groups, school systems, and officials in their efforts to combat the drug abuse and trafficking problem at the local level; and

(F) increased emphasis on the interdiction of drugs and drug smugglers at the borders of the United States, in the air, at sea, and on the land;

(3) funds to support the interdiction of narcotics smugglers who threaten the transport of drugs through the air, on the sea, and across the land borders of the United States should be emphasized in the Federal Government budget process to the same extent as the other elements of a comprehensive antidrug effort are emphasized;

(4) the Department of Defense and the use of its resources should be an integral part of a comprehensive, natonal drug interdiction program;

(5) the Federal Government civilian agencies engaged in drug interdiction, particularly the United States Customs Service

and the Coast Guard, currently lack the aircraft, ships, radar, command, control, communications, and intelligence (C3I) system, and manpower resources necessary to mount a comprehensive attack on the narcotics traffickers who threaten the United States;

(6) the civilian drug interdiction agencies of the United States are currently interdicting only a small percentage of the illegal, drug smuggler penetrations in the United States every year;

(7) the budgets for our civilian drug interdiction agencies, primarily the United States Customs Service and the Coast Guard, have not kept pace with those of the traditional investigative law enforcement agencies of the Department of Justice; and

(8) since the amendment of the Posse Comitatus Act (18 U.S.C. 1385) in 1981, the Department of Defense has assisted in the effort to interdict drugs, but they can do more.

SEC. 3003. PURPOSES.

It is the purpose of this title—

(1) to increase the level of funding and resources available to civilian drug interdiction agencies of the Federal Government;

(2) to increase the level of support from the Department of Defense as consistent with the Posse Comitatus Act, for interdiction of the narcotics traffickers before such traffickers penetrate the borders of the United States; and

(3) to improve other drug interdiction programs of the Federal Government.

Subtitle A—Department of Defense Drug Interdiction Assistance

SEC. 3051. SHORT TITLE.

This subtitle may be cited as the "Defense Drug Interdiction Assistance Act".

SEC. 3052. AUTHORIZATION.

(a) AUTHORIZATION OF APPROPRIATIONS FOR ENHANCED DRUG INTERDICTION ACTIVITIES.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987 for enhancement of drug interdiction assistance activities of the Department as follows:

(1) For procurement of aircraft for the Navy, $138,000,000, to be available for (A) the refurbishment and upgrading, for drug interdiction purposes, of four existing E-2C Hawkeye surveillance aircraft or any other aircraft of the Navy which the Secretary considers better suited than E-2C Hawkeye surveillance aircraft to perform the drug interdiction mission, and (B) the procurement of four replacement aircraft (of the same type of aircraft refurbished and upgraded under the authorization in this paragraph) and related spares for the Navy.

(2) For procurement of seven radar aerostats, $99,500,000.

(3) For procurement of eight Blackhawk helicopters, $40,000,000.

(b) LOAN OF EQUIPMENT TO LAW ENFORCEMENT AGENCIES.—(1)(A) The Secretary of Defense shall make two of the existing aircraft refurbished and upgraded under subsection (a)(1) available to the Customs Service and the other two of such existing aircraft available to the Coast Guard.

(B) The Customs Service and the Coast Guard shall each have the responsibility for operation and maintenance costs attributable to the aircraft made available to the Customs Service and the Coast Guard, respectively, under subparagraph (A).

(2) The Secretary of Defense shall make the radar aerostats acquired under subsection (a)(2) and the helicopters acquired under subsection (a)(3) available to agencies of the United States designated by the National Drug Enforcement Policy Board established by the National Narcotics Act of 1984.

(3) Aircraft and radar aerostats shall be made available to agencies under this subsection subject to the provisions of chapter 18 of title 10, United States Code.

(c) LIMITATION ON PROCUREMENT.—Amounts appropriated or otherwise made available to the Department of Defense for procurement for fiscal year 1987 or any prior fiscal year may be obligated for equipment for enhancement of authorized drug enforcement activities of the Department of Defense under subsection (a) or any other provision of law only if the equipment—

(1) is fully supportable within the existing service support system of the Department of Defense; and

(2) reasonably relates to an existing military, war reserve, or mobilization requirement.

SEC. 3053. COAST GUARD ACTIVITIES.

(a) FUNDING FOR PERSONNEL ON NAVAL VESSELS.—(1) Of the funds appropriated for operation and maintenance for the Navy for fiscal year 1987, the sum of $15,000,000 shall be transferred to the Secretary of Transportation and shall be available only for members of the Coast Guard assigned to duty as provided in section 379 of title 10, United States Code (as added by subsection (b)).

(2) The active duty military strength level for the Coast Guard for fiscal year 1987 is hereby increased by 500 above any number otherwise provided by law.

(b) ENHANCED DRUG INTERDICTION ASSISTANCE.—(1) Chapter 18 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes

"(a) The Secretary of Defense and the Secretary of Transportation shall provide that there be assigned on board appropriate surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Transportation, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such

personnel may be assigned other duty involving enforcement of laws listed in section 374(a)(1) of this title.

"(d) In this section, the term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"Sec. 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes".

(3) Effective on the date of the enactment of this Act, section 1421 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 750), is repealed.

(c) COAST GUARD RESERVE.—The Selected Reserve of the Coast Guard Reserve shall be programmed to attain a strength as of September 30, 1987, of not less than 14,400. Of such number, not less than 1,400 shall be used to augment units of the Coast Guard assigned to drug interdiction missions.

(d) USE OF DEPARTMENT OF DEFENSE FUNDS FOR THE COAST GUARD.—In addition to any other amounts authorized to be appropriated to the Department of Defense in fiscal year 1987, $45,000,000 shall be authorized to be appropriated for the installation of 360-degree radar systems on Coast Guard long-range surveillance aircraft. Any modifications of existing aircraft pursuant to this subsection shall comply with validated requirements and specifications developed by the Coast Guard. The limitations contained in paragraphs (1) and (2) of section 3052(c) shall apply with respect to activities carried out under this subsection.

SEC. 3054. REPORT ON DEFENSE DRUG EDUCATION ACTIVITIES.

Not later than December 1, 1986, the Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of—

(1) the extent to which youth enrolled in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse,

(2) the types of drug education programs that are currently being provided in such schools,

(3) whether additional drug education programs are needed in such schools, and

(4) the extent to which drug education for youth in grades kindergarten through 12 include or should include preventive peer counseling classes.

SEC. 3055. DRIVING WHILE IMPAIRED.

Section 911 of title 10, United States Code, is amended by inserting "or while impaired by a substance described in section 912a(b) of this title (article 112a(b))," after "manner,".

SEC. 3056. ASSISTANCE TO CIVILIAN LAW ENFORCEMENT AND EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL.

(a) ASSISTANCE TO CIVILIAN LAW ENFORCEMENT.—Section 374(a) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or with respect to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws".

(b) EMERGENCY ASSISTANCE.—Section 374(c) of such title is amended to read as follows:

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used as a base of operations outside the land area of the United States (or any territory, commonwealth, or possession of the United States) by Federal law enforcement officials—

"(A) to facilitate the enforcement of a law listed in subsection (a); and

"(B) to transport such law enforcement officials in connection with such operations;

if the Secretary of Defense, the Attorney General, and the Secretary of State jointly determine that an emergency circumstance exists.

"(2)(A) Subject to subparagraph (B), equipment operated by or with the assistance of personnel assigned under subsection (a) may not be used to interdict or interrupt the passage of vessels and aircraft.

"(B) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used to intercept vessels and aircraft outside the land area of the United States (or any territory, commonwealth, or possession of the United States) for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials if the Secretary of Defense, the Attorney General, and the Secretary of State jointly determine that an emergency circumstance exists and that enforcement of a law listed in subsection (a) would be seriously impaired if such use of equipment were not permitted. Such use of equipment may continue into the land area of the United States (or any territory or possession of the United States) in cases involving the hot pursuit of vessels or aircraft where such pursuit began outside such land area.

"(3) For purposes of this subsection, an emergency circumstance exists when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interest of the United States; and

"(B) the assistance described in this subsection would significantly enhance the enforcement of a law listed in subsection (a).".

SEC. 3057. ADDITIONAL DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Congress the following:

(A) A detailed list of all forms of assistance that shall be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies, including the

United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service.

(B) A detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, a description of the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Congress receives the list and plan submitted under such subsection, the Committees on Armed Services of the Senate and the House of Representatives shall submit their approval or disapproval of such list and plan to the Secretary of Defense. Upon receipt of such approval or disapproval, the Secretary shall immediately convene a conference of the heads of the Federal Government agencies with jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance to be made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such assistance.

(c) EQUIPMENT SUBJECT TO SECTION 3052(c).—Equipment identified in this section is subject to the provisions of section 3052(c).

(d) APPLICABILITY.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(e) REVIEW BY GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the

Department of Defense with subsections (a) and (b). Not later than 90 days after the date on which the conference is convened under subsection (b), the Comptroller General shall transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

SEC. 3058. GRADE OF DIRECTOR OF DEPARTMENT OF DEFENSE TASK FORCE ON DRUG ENFORCEMENT.

During fiscal year 1987, the number of officers of the Marine Corps authorized under section 525(b) of title 10, United States Codes, to be on active duty in grades above major general is increased by one during any period that an officer of the Marine Corps is serving as the Director of the Department of Defense Task Force on Drug Enforcement. An additional officer in a grade above major general by reason of this section may not be in the grade of general.

SEC. 3059. CIVIL AIR PATROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Civil Air Patrol, the all-volunteer civilian auxiliary of the Air force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and

(2) the Secretary of the Air Force should fully support that participation.

(b) AUTHORIZATION.—In addition to any other amounts appropriated for the Civil Air Patrol for fiscal year 1987, there are authorized to be appropriated for the Civil Air Patrol, out of any unobligated and uncommitted balances of appropriations for the Department of Defense for fiscal year 1986 which are carried forward into fiscal year 1987, $7,000,000 for the acquisition of the major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions.

(c) REPORTS.—(1) The Secretary of the Air Force shall submit to the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives quarterly reports which contain the following information:

(A) A description of the manner in which any funds are used under subsection (b).

(B) A detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(2) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of the enactment of this Act.

Subtitle B—Customs Enforcement

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Customs Enforcement Act of 1986".

PART 1—AMENDMENTS TO THE TARIFF ACT OF 1930

SEC. 3111. DEFINITIONS.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(1) by inserting ", and monetary instruments as defined in section 5312 of title 31, United States Code" before the period in subsection (c);

(2) by striking out "The term" in subsection (k) and inserting in lieu thereof "(1) The term";

(3) by adding at the end of subsection (k) the following new paragraph:

"(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

"(A) has visited any hovering vessel;

"(B) has received merchandise while in the customs waters beyond the territorial sea; or

"(C) has received merchandise while on the high seas;

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place."; and

(4) by adding at the end thereof the following:

"(m) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the meaning given that term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

"(1) an appropriate license or permit; or

"(2) the Controlled Substances Import and Export Act.".

SEC. 3112. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

"(a) VESSEL ARRIVAL.—(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

"(A) any vessel from a foreign port or place;

"(B) any foreign vessel from a domestic port; or

"(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

"(2) The Secretary may by regulation—

"(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

"(B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

"(b) VEHICLE ARRIVAL.—(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

"(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

"(A) report the arrival; and

"(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(c) AIRCRAFT ARRIVAL.—The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

"(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe.

"(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

"(1) depart from the port, place, or airport of arrival; or

"(2) discharge any passenger or merchandise (including baggage);

only in accordance with regulations prescribed by the Secretary.".

SEC. 3113. PENALTIES FOR ARRIVAL, REPORTING, ENTRY, AND DEPARTURE VIOLATIONS.

(a) FOR VIOLATIONS OF ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.—Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read as follows:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

"(a) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with section 433;

"(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 433(d) without revealing the facts;

"(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or

"(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

"(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture

"(c) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (b), any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) is, upon conviction, liable for a fine of not more than $2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

"(d) ADDITIONAL CIVIL PENALTY.—If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 584, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.".

(b) INCREASE IN PENALTIES FOR DEPARTURE BEFORE REPORT OR ENTRY.—Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—

(1) by striking out "shall be liable to a penalty of $5,000," after "vessel"; and

(2) by striking out "$500" and inserting "$5,000 for the first violation, and $10,000 for each subsequent violation,".

SEC. 3114. PENALTIES FOR UNAUTHORIZED UNLOADING OF PASSENGERS.

Section 454 (19 U.S.C. 1454), is amended by striking out "$500 for each" and inserting "$1,000 for the first passenger and $500 for each additional".

SEC. 3115. REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) AMENDMENT.—Section 459 of the Tariff Act of 1930 (19 U.S.C. 1459) is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

"(1) enter the United States only at a border crossing point designated by the Secretary; and

"(2) immediately—

"(A) report the arrival, and

"(B) present themselves, and all articles accompanying them for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

"(c) INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

"(d) DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.—Except as otherwise authorized by the Secretary, any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

"(e) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c);

"(2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;

"(3) to violate subsection (d); or

"(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

"(f) CIVIL PENALTY.—Any individual who violates any provision of subsection (e) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

"(g) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally violates any provision of subsection (e) is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.".

(b) REPEAL.—Section 460 is repealed.

SEC. 3116. PENALTIES FOR FAILURE TO DECLARE.

Section 497 of the Tariff Act of 1930 (19 U.S.C. 1497) is amended to read as follows:

"SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

"(a) IN GENERAL.—(1) Any article which—

"(A) is not included in the declaration and entry as made; and

"(B) is not mentioned before examination of the baggage begins—

"(i) in writing by such person, if written declaration and entry was required, or

"(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

"(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

"(A) if the article is a controlled substance, 200 percent of the value of the article; and

"(B) if the article is not a controlled substance, the value of the article.

"(b) VALUE OF CONTROLLED SUBSTANCES.—(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

"(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.".

SEC. 3117. EXAMINATION OF BOOKS AND WITNESSES.

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) is amended—

(1) by striking out ", required to be kept under section 508 of this Act," in subsection (a)(2) and inserting ", as defined in subsection (c)(1)(A),"; and

(2) by amending subsection (c)(1)(A) to read as follows:

"(A) The term 'records' includes statements, declarations, or documents—

"(i) required to be kept under section 508, or

"(ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.".

SEC. 3118. FALSE MANIFESTS; LACK OF MANIFEST.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out "$500" each place it appears and inserting in lieu thereof "$1,000";

(2) by striking out "$50" in subsection (a)(2) and inserting in lieu thereof "$1,000";

(3) by striking out "$25" in subsection (a)(2) and inserting in lieu thereof "$500"; and

(4) by striking out "$10" in subsection (a)(2) and inserting in lieu thereof "$200".

SEC. 3119. UNLAWFUL UNLOADING OF MERCHANDISE.

Section 586 of the Tariff Act of 1930 (19 U.S.C. 1586) is amended—

(1) by striking out "$1,000" wherever it appears and inserting "$10,000"; and

(2) by amending subsection (e)—

(A) by striking out "one league of the coast of the United States" and inserting "customs waters"; and

(B) by striking out "2 years" and inserting "15 years".

SEC. 3120. AVIATION SMUGGLING.

Part V of title IV of the Tariff Act of 1930 is amended by adding after section 589 the following new section:

"SEC. 590. AVIATION SMUGGLING.

"(a) IN GENERAL.—It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

"(b) SEA TRANSFERS.—It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

"(1) either—

"(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

"(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act) (19 U.S.C. 1703(b)), or

"(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

"(c) CIVIL PENALTIES.—Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than $10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 497(b).

"(d) CRIMINAL PENALTIES.—In addition to being liable for a civil penalty under subsection (c), any person who intentionally commits a violation of any provision of this section is, upon conviction—

"(1) liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance; or

"(2) liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

"(e) SEIZURE AND FORFEITURE.—

"(1) Except as provided in paragraph (2), a vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this section, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with the customs laws.

"(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier.

"(f) DEFINITION OF MERCHANDISE.—As used in this section, the term 'merchandise' means only merchandise the importation of which into the United States is prohibited or restricted.

"(g) INTENT OF TRANSFER OF MERCHANDISE.—For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (e) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

"(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.

"(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

"(3) The failure to identify correctly—

"(A) the vessel by name or country of registration, or

"(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority.

"(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.

"(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

"(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

"(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

"(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.".

SEC. 3121. SEIZURES.

Section 594 of the Tariff Act of 1930 (19 U.S.C. 1594) is amended to read as follows:

"SEC. 594. SEIZURE OF CONVEYANCES.

"(a) IN GENERAL.—Whenever—

"(1) any vessel, vehicle, or aircraft; or

"(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

"(b) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

"(1) on the person;

"(2) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

"(3) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

"(c) PROHIBITED MERCHANDISE ON CONVEYANCE.—If any merchandise the importation of which is prohibited is found to be, or to have been—

"(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

"(A) that are not manifested (or not shown on bills of lading or airway bills); or

"(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

"(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'owner or operator' includes—

"(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

"(B) the officers and directors of a corporation;

"(C) station managers and similar supervisory ground personnel employed by airlines;

"(D) one or more partners of a partnership;

"(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

"(F) and other persons with similar responsibilities.

"(2) The term 'master' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

"(e) COSTS AND EXPENSES OF SEIZURE.—When a common carrier has been seized in accordance with the provisions of subsection (c) and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.".

SEC. 3122. SEARCHES AND SEIZURES.

Section 595(a) of the Tariff Act of 1930 (19 U.S.C. 1595(a)) is amended to read as follows:

"(a) WARRANT.—(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

"(A) any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States unlawfully;

"(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service; or

"(C) any document, container, wrapping, or other article which is evidence of a violation of section 592 involving fraud or of any other law enforced or administered by the United States Customs Service,

is in any dwelling house, store, or other building or place, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise or other article described in the warrant.

"(2) If any house, store, or other building or place, in which any merchandise or other article subject to forfeiture is found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof that is within the United States may be taken down or removed.".

SEC. 3123. FORFEITURES.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended—

(1) by striking out "the proviso to" in subsection (a) and inserting "subsection (b) or (c) of";

(2) by striking out "shall" in subsection (a) and inserting "may"; and

(3) by adding at the end thereof the following new subsection.

"(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited.".

SEC. 3124. PROCEEDS OF FORFEITED PROPERTY.

Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by adding at the end thereof the following new subsections:

"(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 605, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

"(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.".

SEC. 3125. COMPENSATION TO INFORMERS.

Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended to read as follows:

"(a) IN GENERAL.—If—

"(1) any person who is not an employee or officer of the United States—

"(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

"(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

"(i) any fraud upon the customs revenue, or

"(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person; and

"(2) such detection and seizure or such information leads to a recovery of--

"(A) any duties withheld, or

"(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

"(b) FORFEITED PROPERTY NOT SOLD.—If—

"(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

"(A) destroyed under the customs or navigation laws, or

"(B) delivered to any governmental agency for official use, and

"(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

"(c) DOLLAR LIMITATION.—The amount awarded and paid to any person under this section may not exceed $250,000 for any case.

"(d) SOURCE OF PAYMENT.—Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

"(e) RECOVERY OF BAIL BOND.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.".

SEC. 3126. FOREIGN LANDING CERTIFICATES.

Section 622 of the Tariff Act of 1930 (19 U.S.C. 1622) is amended by inserting before the period at the end thereof the following: ", or to comply with international obligations".

SEC. 3127. EXCHANGE OF INFORMATION WITH FOREIGN AGENCIES.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 628. EXCHANGE OF INFORMATION.

"(a) IN GENERAL.—The Secretary may by regulation authorize customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

"(1) insure compliance with any law or regulation enforced or administered by the Customs Service;

"(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

"(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; and

"(4) an action comparable to any of those described in paragraphs (1) through (4) undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.".

"(b) NONDISCLOSURE AND USES OF INFORMATION PROVIDED.—

"(1) Information may be provided to foreign customs and law enforcement agencies under subsection (a) only if the Secretary obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Secretary.

"(2) No information may be provided under subsection (a) to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (1).".

SEC. 3128. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

Part V of title IV of the Tariff Act of 1930 is further amended by adding at the end thereof the following new section:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

"(a) IN GENERAL.—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) FUNCTIONS AND DUTIES.—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) COMPLIANCE.—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign

country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station is a port of entry within the customs territory of the United States.

"(d) SEIZURES.—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory to the United States to be proceeded against under the customs law.

"(e) STATIONING OF FOREIGN CUSTOMS OFFICERS IN THE UNITED STATES.—The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

"(f) APPLICATION OF CERTAIN LAWS.—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

"(1) sections 111 and 1114 of title 18, United States Code, shall apply as if the officials were designated in those sections; and

"(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both.".

PART 2—UNDERCOVER CUSTOMS OPERATIONS

SEC. 3131. UNDERCOVER INVESTIGATIVE OPERATIONS OF THE CUSTOMS SERVICE.

(a) CERTIFICATION REQUIRED FOR EXEMPTION OF UNDERCOVER OPERATIONS FROM CERTAIN LAWS.—With respect to any undercover investigative operation of the United States Customs Service (hereinafter in this section referred to as the "Service") which is necessary for the detection and prosecution of offenses against the United States which are within the jurisdiction of the Secretary of the Treasury—

(1) sums authorized to be appropriated for the Service may be used—

(A) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

(i) sections 1341 and 3324 of title 31, United States Code,

(ii) sections 3732(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22),

(iii) section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255),

(iv) the third undesignated paragraph under the heading "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), and

(v) section 304(a) and (c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a) and (c)), and

(B) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code;

(2) sums authorized to be appropriated for the Service and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code; and

(3) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31, United States Code;

only upon the written certification of the Commissioner of Customs (or, if designated by the Commissioner the Deputy or an Assistant Commissioner of Customs) that any action authorized by paragraph (1), (2), or (3) of this subsection is necessary for the conduct of such undercover operation.

(b) LIQUIDATION OF CORPORATIONS AND BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation under paragraph (1)(B) of subsection (a) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his designee determines is practicable, shall report the circumstances to the Secretary of the Treasury and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c) DEPOSIT OF PROCEEDS.—As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under paragraphs (2) and (3) of subsection (a) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(d) AUDITS.—(1) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year, and

(A) submit the results of the audit in writing to the Secretary of the Treasury; and

(B) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(2) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(A) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(B) the number, by programs, of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted; and

(C) the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.

(e) DEFINITIONS.—For purposes of subsection (d)—

(1) The term "closed" refers to the earliest point in time at which—

(A) all criminal proceedings (other than appeals) are concluded, or

(B) covert activities are concluded, whichever occurs later.

(2) The term "employees" means employees, as defined in section 2105 of title 5 of the United States Code, of the Service.

(3) The terms "undercover investigative operation" and "undercover operation" mean any undercover investigative operation of the Service—

(A) in which—

(i) the gross receipts (excluding interest earned) exceed $50,000, or

(ii) expenditures (other than expenditures for salaries of employees) exceed $150,000; and

(B) which is exempt from section 3302 or 9102 of title 31, United States Code;

except that subparagraphs (A) and (B) shall not apply with respect to the report required under paragraph (2) of sub section (d).

PART 3—CUSTOMS SERVICE AUTHORIZATIONS AND FORFEITURE FUND

SEC. 3141. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1987 FOR THE UNITED STATES CUSTOMS SERVICE.

(a) AUTHORIZATIONS.—Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended as follows:

"(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

"(A) $749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

"(B) $80,999,000 is for the salaries and expenses of additional

ties; and

"(C) $171,050,000 is for the operation and maintenance of the air interdiction program of the Service, of which—

"(i) $93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and

"(ii) $350,000 is for a feasibility and application study for a low-level radar detection system in collaboration with the Los Alamos National Laboratory.

"(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

"(A) not less than 2,500 merchandise entries (including informal entries) were made; and

"(B) not less than $1,500,000 in customs revenues were assessed.".

(b) SPECIAL EFFECTIVE DATE RULE.—If the bill H.R. 5300 (providing for reconciliation of the budget for fiscal year 1987) is enacted and includes an amendment to section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 which is identical to the amendment made by subsection (a) of this section, then the amendment made by subsection (a) shall have no effect.

SEC. 3142. CUSTOMS FORFEITURE FUND.

(a) AMENDMENT.—Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) is amended—

(1) by amending subsection (a)—

(A) by striking out "1987" in the first sentence and inserting "1991";

(B) by inserting "(including investigative costs leading to seizures)" after "seizure" in paragraph (1);

(C) by inserting "and" after the semicolon at the end of paragraph (4);

(D) by striking out paragraph (5);

(E) by redesignating paragraph (6) as paragraph (5); and

(F) by amending the last sentence to read as follows: "In addition to the purposes described in paragraphs (1) through (5), the fund is available for—

"(i) purchases by the Customs Service of evidence of—

"(I) smuggling of controlled substances, and

"(II) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, United States Code, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

"(ii) the equipping for law enforcement functions of any vessel, vehicle, or aircraft available for official use by the Customs Service;

"(iii) the reimbursement, at the discretion of the Secretary, of private citizens for expenses incurred by them in cooperating with the Customs Service in investigations and undercover law enforcement operations; and

"(iv) the publicizing of the availability of rewards under section 619."; and

(2) by amending subsection (f) to read as follows:

"(f)(1) There are authorized to be appropriated from the fund for each of the fiscal years beginning with fiscal year 1987 not more than $20,000,000.

"(2) At the end of each of fiscal years 1987, 1988, 1989, and 1990, any amount in the fund in excess of $20,000,000 shall be deposited in

the general fund of the Treasury. At the end of fiscal year 1991, any amount remaining in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October 1, 1986.

PART 4—MISCELLANEOUS CUSTOMS AMENDMENTS

SEC. 3151. RECREATIONAL VESSELS.

Section 12109(b) of title 46, United States Code, is amended by adding at the end the following: "Such vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such a pleasure vessel shall be subject to all applicable customs regulations.".

SEC. 3152. ASSISTANCE FOR CUSTOMS OFFICERS.

Section 3071 of the Revised Statutes of the United States (19 U.S.C. 507) is amended to read as follows:

"SEC. 3071. (a) Every customs officer shall—

"(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government; and

"(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If a person, without reasonable excuse, neglects or refuses to assist a customs officer upon proper demand under paragraph (2), such person is guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 3153. REPORTS ON EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS.

Section 5316(a)(2) of title 31, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

PART 5—AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

SEC. 3161. POSSESSION, MANUFACTURE, OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATION.

(a) AMENDMENT TO ACT.—Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by inserting "POSSESSION," in the heading;

(2) by striking out "It shall" and inserting in lieu thereof "(a) It shall";

(3) by striking out "This section" and inserting in lieu thereof "(c) This section";

(4) by inserting "or into waters within a distance of 12 miles of the coast of the United States" after "United States" each place it appears in subsection (a); and

(5) by inserting after subsection (a) the following new subsection:

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States, to—

"(1) manufacture or distribute a controlled substance; or

"(2) possess a controlled substance with intent to distribute.".

(b) CONFORMING AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out "Manufacture" in the item relating to section 1009 and inserting in lieu thereof "Possession, manufacture".

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

SEC. 3201. SHORT TITLE.

This subtitle may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 3202. IMPROVEMENT OF PUBLIC LAW 96-350.

The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96-350; 94 Stat. 1159) is amended by striking all after the enacting clause and inserting in lieu thereof the following: "That this Act may be cited as the 'Maritime Drug Law Enforcement Act'.

"SEC. 2. The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

"SEC. 3. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) For purposes of this section, a 'vessel of the United States' means—

"(1) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c)(1) For purposes of this section, a 'vessel subject to the jurisdiction of the United States' includes—

"(A) a vessel without nationality;

"(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

"(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

"(D) a vessel located within the customs waters of the United States; and

"(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.

Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under paragraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

"(2) For purposes of this section, a 'vessel without nationality' includes—

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed; and

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.

A claim of registry under subparagraph (A) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation may be proved by certification of the Secretary of State or the Secretary's designee.

"(3) For purposes of this section, a claim of nationality or registry only includes:

"(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

"(B) flying its flag nation's ensign or flag; or

"(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a

part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this Act.

"(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"SEC. 3. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881).".

Subtitle D—Coast Guard

SEC. 3251. COAST GUARD DRUG INTERDICTION ENHANCEMENT.

(a) ADDITIONAL AUTHORIZATIONS FOR THE COAST GUARD.—

(1) There are authorized to be appropriated for Acquisition, Construction, and Improvements of the Coast Guard, $89,000,000.

(2) There are hereby authorized to be appropriated for Operating Expenses of the Coast Guard, $39,000,000. This amount shall be used to increase the full-time equivalent strength level for the Coast Guard for active duty personnel for fiscal year 1987 to 39,220, and to increase the utilization rate of Coast Guard equipment.

(b) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized to be appropriated for the Coast Guard by this section are in addition to any amounts otherwise authorized by law.

(c) AUTHORIZATION ENHANCEMENT.—Nothing in this Act shall require the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment except to the extent that—

(1) additional appropriations are made available in appropriations Acts for that purpose; or

(2) funds are transferred to the Secretary of Transportation for that purpose pursuant to this Act.

Subtitle E—United States-Bahamas Drug Interdiction Task Force

SEC. 3301. ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.—(A) There is a ıorized to be established a United States-Bahamas Drug Inte ıction Task Force to be operated jointly by the United States Government and the Government of the Bahamas.

(B) The Secretary of State, the Commandant of the Coast Guard, the Commissioner of Customs, the Attorney General, and the head of the National Narcotics Border Interdiction System (NNBIS), shall upon enactment of this Act, immediately commence negotiations with the Government of the Bahamas to enter into a detailed agreement for the establishment and operation of a new drug interdiction task force, including plans for (i) the joint operation and maintenance of any drug interdiction assets authorized for the task force in this section and section 3141, and (ii) any training and personnel enhancements authorized in this section and section 3141.

(C) The Attorney General shall report to the appropriate committees of Congress on a quarterly basis regarding the progress of the United States-Bahamas Drug Interdiction Task Force.

(2) AMOUNTS AUTHORIZED.—There are authorized to be appropriated, in addition to any other amounts authorized to be appropriated in this title, $10,000,000 for the following:

(A) $9,000,000 for 3 drug interdiction pursuit helicopters for use primarily for operations of the United States-Bahamas Drug Interdiction Task Force established under this section; and

(B) $1,000,000 to enhance communications capabilities for the operation of a United States-Bahamas Drug Interdiction Task Force established under this section.

(3) COAST GUARD-BAHAMAS DRUG INTERDICTION DOCKING FACILITY.—(A) There is authorized to be appropriated for acquisition, construction, and improvements for the Coast Guard for fiscal year 1987, $5,000,000, to be used for initial design engineering, and other activities for construction of a drug interdiction docking facility in the Bahamas to facilitate Coast Guard and Bahamian drug interdiction operations in and through the Bahama Islands. Of the amounts authorized to be appropriated in this subsection, such sums as may be necessary shall be available for necessary communication and air support.

(B) The Commandant of the Coast Guard shall use such amounts appropriated pursuant to the authorization in this paragraph as may be necessary to establish a repair, maintenance, and boat lift facility to provide repair and maintenance services for both Coast Guard and Bahamian marine drug interdiction equipment, vessels, and related assets.

(b) CONCURRENCE BY SECRETARY OF STATE.—Programs authorized by this section may be carried out only with the concurrence of the Secretary of State.

Subtitle F—Command, Control, Communications, and Intelligence Centers

SEC. 3351. ESTABLISHMENT OF COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE CENTERS (C-3I).

There are authorized to be appropriated $25,000,000 to the United States Customs Service for the establishment of command, control, communications, and intelligence (C-3I) centers, including sector operations centers and a national command, control, communications, and intelligence (C-3I) center, in locations within the United States. The coordination of the establishment and location of such C-3I centers shall be conducted by the Commissioner of Customs; together with the Commandant of the Coast Guard; the Attorney General of the United States; and the National Narcotics Border Interdiction System (NNBIS).

Subtitle G—Transportation Safety

SEC. 3401. AIR SAFETY.

(a)(1) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(b)) is amended by adding at the end the following:

"(3) Nothing in this subsection or in any other provision of this Act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft, for a person who—

"(A) knowingly and willfully forges, counterfeits, alters, or falsely makes an aircraft registration certificate;

"(B) knowingly sells, uses, attempts to use, or possesses with intent to use a fraudulent aircraft registration certificate;

"(C) knowingly and willfully displays or causes to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft; or

"(D) obtains an aircraft registration certificate from the administrator by knowingly and willfully falsifying, concealing or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.".

(2) Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401) is amended by adding at the end the following new subsection:

"INSPECTION BY LAW ENFORCEMENT OFFICERS

"(g) The operator of an aircraft shall make available for inspection an aircraft's certificate of registration upon request by a Federal, State, or local law enforcement officer.".

(3) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 501. Registration of aircraft nationality."

is amended by adding at the end the following:

"(g) Inspection by law enforcement officers".

(b)(1) Subsection (q) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472(q)) is amended to read as follows:

"VIOLATIONS IN CONNECTION WITH TRANSPORTATION OF CONTROLLED SUBSTANCES

"(q)(1) It shall be unlawful, in connection with an act described in paragraph (2) and with knowledge of such act, for any person—

"(A) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if the aircraft is not registered under section 501 or the certificate of registration of the aircraft is suspended or revoked, or if such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(B) to operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration is suspended or revoked, or that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(C) to knowingly and willfully serve, or attempt to serve, in any capacity as an airman without a valid airman certificate authorizing such person to serve in such a capacity;

"(D) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity;

"(E) to knowingly and willfully operate an aircraft in violation of any rule, regulation, or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation or anticollision lights; and

"(F) to knowingly operate an aircraft with a fuel tank or fuel system that has been installed or modified on the aircraft, unless such tank or system and the installation or modification of such tank or system is in accordance with all applicable rules, regulations, and requirements of the Administrator.

"(2) The act referred to in paragraph (1) is the transportation by aircraft of any controlled substance or the aiding or facilitating of a controlled substance offense where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).

"(3) A person violating this subsection shall be subject to a fine not exceeding $25,000, or imprisonment not exceeding 5 years, or both.

"(4) A person who, in connection with transportation described in paragraph (2), operates an aircraft on which a fuel tank or fuel system has been installed or modified and does not carry aboard the aircraft any certificate required to be issued by the Administrator for such installation or modification shall be presumed to have violated subparagraph (F) of paragraph (1).

"(5) In the case of a violation of subparagraph (F) of paragraph (1), the fuel tank or fuel system and the aircraft involved shall be subject to seizure and forfeiture. The provisions of law relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws;

"(B) the disposition of such property or the proceeds from the sale thereof;

"(C) the remission or mitigation of such forfeitures; and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures;

shall apply to seizures and forfeitures under this paragraph. The Secretary may authorize such officers and agents as are necessary to carry out seizures and forfeitures under this paragraph and such officers and agents shall have the powers and duties given to customs officers with respect to the seizure and forfeiture of property under the customs laws.

"(6) For purposes of this subsection, the term 'controlled substance' has the meaning given to such term by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 902. Criminal penalties."

is amended by striking the item relating to subsection (q) and inserting the following:

"(q) Violations in connection with transportation of controlled substances.".

(c) Section 904(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1474(a)) is amended—

(1) by striking "$500" each place it appears and inserting in lieu thereof "$5,000";

(2) by inserting after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on board of, or to have been unladen from, an aircraft subject to section 1109 (b) and (c) of this Act, the owner or person in charge of such aircraft shall be subject to the penalties provided for in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), unless such owner or person is able to demonstrate, by a preponderance of the evidenced, that such owner or person did not know, and could not, by the exercise of the highest degree of care and diligence, have known, that any such controlled substance was on board."; and

(3) by amending the third sentence to read as follows: "In the case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

(d)(1) Section 1109 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509) is amended by adding at the end thereof the following:

"REPORTING TRANSFER OF OWNERSHIP

"(f) Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale, transfer, or conveyance of such ownership interest, file with the Secretary of the Treasury within 15 days after such sale, conditional sale, transfer or convevance such notice as the Secretary of the Treasury may by regulation require. The filing of a notice under this subsection shall not relieve any person from the filing requirements under section 501 or 503 of this Act."

(2) Within 30 days after the date of enactment of subsection (f) of section 1109 of the Federal Aviation Act of 1958 as added by this subsection, the Secretary of the Treasury shall promulgate regulations establishing guidelines by which persons or classes of persons may apply for exemptions from the filing requirements of subsection (f) of section 1109. The Secretary of the Treasury may exempt such persons or classes of persons pursuant to such regulations.

(3) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 1109. Application of existing laws relating to foreign commerce."

is amended by adding at the end thereof the following:

"(f) Reporting transfer of ownership".

SEC. 3402. DRUG AND HIGHWAY SAFETY.

(a) STUDY.—The Secretary of Transportation shall conduct a study to determine the relationship between the usage of controlled substances and highway safety. Such study shall include a simulation of driving conditions, emergency situations, and driver performance under various drug and dosage conditions. Such study shall determine the incidence of controlled substance usage in highway accidents resulting in fatalities and the dosage levels for controlled substances which are most likely to result in impairment of driver performance.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report on the results of the study conducted under subsection (a).

SEC. 3403. SAVINGS PROVISION.

In any proceeding under section 11344 of title 49, United States Code, involving an application by a rail carrier (or a person controlled by or affiliated with a rail carrier) to acquire a motor carrier, the Interstate Commerce Commission, and any Federal court reviewing action of the Commission, shall follow the standards set forth in the Commission decision in Ex Parte No. 438 if the applicant rail carrier, between July 20, 1984, and September 30, 1986 (1) filed an application with the Commission to acquire a motor carrier, (2) entered into a contract or signed a letter of intent to acquire a motor carrier, or (3) made a public tender offer to acquire a motor carrier.

Subtitle H—Department of Justice Funds for Drug Interdiction Operations in Hawaii

SEC. 3421. ADDITIONAL FUNDS FOR THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for fiscal year 1987, in addition to any other amounts authorized to be appropriated to the Department for such fiscal year, $7,000,000 for helicopters with forward looking infrared radiation detection devices for drug interdiction operations in Hawaii.

Subtitle I—Federal Communications Commission

SEC. 3451. COMMUNICATIONS.

The Federal Communications Commission may revoke any private operator's license issued to any person under the Communications Act of 1934 (47 U.S.C. 151 et seq.) who is found to have willfully used said license for the purpose of distributing, or assisting in the distribution of, any controlled substance in violation of any provision of Federal law. In addition, the Federal Communications Commission may, upon the request of an appropriate Federal law enforcement agency, assist in the enforcement of Federal law prohibiting the use or distribution of any controlled substance where communications equipment within the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 is willfully being used for purposes of distributing, or assisting in the distribution of, any such substance.

NATIONAL ANTIDRUG REORGANIZATION AND COORDINATION ACT

TITLE VII—NATIONAL ANTIDRUG REORGANIZATION AND COORDINATION

SEC. 7001. SHORT TITLE.

This title may be cited as the "National Antidrug Reorganization and Coordination Act".

SEC. 7002. FINDINGS.

The Congress finds that—

(1) the Federal Government's response to drug trafficking and drug abuse is divided among several dozen agencies and bureaus of the Government, ranging from the Department of Defense to the Department of Health and Human Services;

(2) numerous recent congressional hearings and reports, reports by the Comptroller General, and studies by Executive branch agencies have documented the waste and inefficiency caused by this division of responsibilities;

(3) interagency competition for credit and budget dollars imposes critical obstacles to efficient application of national resources in combating drug trafficking and drug abuse; and

(4) successfully combating such trafficking and drug abuse requires coherent planning that includes intelligent organization and operations of Executive branch agencies.

SEC. 7003. SUBMISSION OF LEGISLATION.

Not later than 6 months after the date of enactment of this title, the President shall submit to each House of Congress recommendations for legislation to reorganize the Executive branch of the Government to more effectively combat drug traffic and drug abuse. In the preparation of such recommendations, the President shall consult with the Comptroller General, State and local law enforcement authorities, relevant committees of the Congress, and the Attorney General and the Secretaries of State, the Treasury, Transportation, Health and Human Services, Defense, and Education.

TITLE IX—DENIAL OF TRADE BENEFITS TO UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

SEC. 9001. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.

The Trade Act of 1974 is amended by adding at the end thereof the following:

"TITLE VIII—TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

"SEC. 801. SHORT TITLE.

"This title may be cited as the 'Narcotics Control Trade Act'.

"SEC. 802. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.

"(a) REQUIRED ACTION BY PRESIDENT.—Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this title—

"(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment;

"(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

"(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem; or

"(4) take any combination of the actions described in paragraphs (1), (2), and (3).

"(b) CERTIFICATIONS; CONGRESSIONAL ACTION.—(1) Subsection (a) shall not apply with respect to a country if the President determines and so certifies to the Congress, at the time of the submission of the report required by section 481(e) of the Foreign Assistance Act of 1961, that during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies.

"(2) In making the certification required by paragraph (1), the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 481(e)(4) of the Foreign Assistance Act of 1961. The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

"(i) the enactment and enforcement of laws prohibiting such conduct,

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

"(4) If the President takes action under subsection (a), that action shall remain in effect until—

"(A) the President makes the certification under paragraph (1), a period of 30 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

"(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 30 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving the determination contained in that certification.

"(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

"(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

"(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

"(c) DURATION OF ACTION.—The action taken by the President under subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

"SEC. 803. SUGAR QUOTA.

"Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcot-

ics enforcement activities as defined in section 802(b) as determined by the President.

"SEC. 801. PROGRESS REPORTS.

"The President shall include as a part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(1)) an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 802(b).

"SEC. 805. DEFINITIONS.

"For purposes of this title—

"(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

"(2) the term 'major drug producing country' means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year; and

"(3) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

"(4) the term 'narcotic and psychotropic drugs and other controlled substances' has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.".

SEC. 9002. CONFORMING AMENDMENTS.

(a) GENERALIZED SYSTEM OF PREFERENCES.—Section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended—

(1) by striking out paragraph (5);

(2) by redesignating paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7); and

(3) by striking out "(5)," in the last sentence.

(b) CARIBBEAN BASIN ECONOMIC RECOVERY.—Section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended—

(1) by inserting "and" after the semicolon at the end of paragraph (5);

(2) by striking out paragraph (6); and

(3) by redesignating paragraph (7) as paragraph (6).

TREATY BETWEEN THE U.S. AND SWISS IN CRIMINAL MATTERS

SWITZERLAND

Mutual Assistance in Criminal Matters

Treaty signed at Bern May 25, 1973
And interpretative letters signed at Bern May 25, 1973 and December 23, 1975;
Ratification advised by the Senate of the United States of America June 21, 1976;
Ratified by the President of the United States of America July 10, 1976;
Ratified by Switzerland July 7, 1976;
Ratifications exchanged at Washington July 27, 1976;
Proclaimed by the President of the United States of America August 9, 1976;
Date of entry into force January 23, 1977.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters was signed at Bern on May 25, 1973, along with six exchanges of interpretative letters of the same date, and an exchange of interpretative letters dated December 23, 1975, the texts of which Treaty and the interpretative letters, are hereto annexed;

The Senate of the United States of America by its resolution of June 21, 1976, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty and the interpretative letters;

The Treaty and the interpretative letters were ratified by the President of the United States of America on July 10, 1976, in pursuance of the advice and consent of the Senate, and were duly ratified on the part of Switzerland;

It is provided in Article 41 of the Treaty that the Treaty shall enter into force 180 days after the date of the exchange of the instruments of ratification;

The instruments of ratification of the Treaty were exchanged at Washington on July 27, 1976; and accordingly the Treaty and the interpretative letters enter into force on January 23, 1977;

NOW, THEREFORE, I, Gerald R. Ford, President of the United States of America, proclaim and make public the Treaty and the interpretative letters, to the end that they shall be observed and fulfilled with good faith on and after January 23, 1977, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this ninth day of August in the year of our Lord one thousand nine hundred seventy-six
[SEAL] and of the Independence of the United States of America the two hundred first.

GERALD R. FORD

By the President:
CHARLES W ROBINSON
Acting Secretary of State

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The President of the United States of America
and
the Swiss Federal Council,

Desiring to conclude a treaty on mutual assistance in criminal matters,

Having appointed for that purpose as their Plenipotentiaries:

The President of the United States of America:

Walter J. Stoessel, Jr.
Assistant Secretary of State for European Affairs

Shelby Cullom Davis
Ambassador Extraordinary and Plenipotentiary
of the United States of America to Switzerland

The Swiss Federal Council:

Dr. Albert Weitnauer
Swiss Ambassador to Great Britain

who, having exchanged their respective full powers, which were found in good and due form, have agreed as follows:

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Chapter I
APPLICABILITY

Article 1

Obligation to Furnish Assistance

1. The Contracting Parties undertake to afford each other, in accordance with provisions of this Treaty, mutual assistance in:

a. investigations or court proceedings in respect of offenses the punishment of which falls or would fall within the jurisdiction of the judicial authorities of the requesting State or a state or canton thereof;

b. effecting the return to the requesting State, or a state or canton thereof, of any objects, articles or other property or assets belonging to it and obtained through such offenses;

c. proceedings concerning compensation for damages suffered by a person through unjustified detention as a result of action taken pursuant to this Treaty.

2. For the purposes of this Treaty, an offense in the requesting State is deemed to have been committed if there exists in that State a reasonable suspicion that acts have been committed which constitute the elements of that offense.

3. The competent authorities of the Contracting Parties may agree that assistance as provided by this Treaty will also be granted in certain ancillary administrative proceedings in respect of measures which may be taken against the perpetrator of an offense falling within the purview of this Treaty. Agreements to this effect shall be concluded by exchange of diplomatic notes.

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4. Assistance shall include, but not be limited to:

a. ascertaining the whereabouts and addresses of persons;

b. taking the testimony or statements of persons;

c. effecting the production or preservation of judicial and other documents, records, or articles of evidence;

d. service of judicial and administrative documents; and

e. authentication of documents.

Article 2

Non-Applicability

1. This Treaty shall not apply to:

a. extradition or arrests of persons accused or convicted of having committed an offense;

b. execution of judgments in criminal matters;

c. investigations or proceedings:

(1) concerning an offense which the requested State considers a political offense or an offense connected with a political offense;

(2) concerning offenses in violation of the laws relating to military obligations;

(3) concerning acts by a person subject to military law in the requesting State which constitute an offense under military law in that State but which would not constitute an offense in the requested State if committed by a person not subject to military law in the requested State;

(4) for the purpose of enforcing cartel or anti-trust laws; or

(5) concerning violations with respect to taxes, customs duties, governmental monopoly charges or exchange control regulations other than the offenses listed in items 26 and 30 of the Schedule to this Treaty (Schedule) and the related offenses in items 34 and 35 of the Schedule.

2. Nevertheless, assistance shall be granted if a request concerns an investigation or proceeding referred to in subparagraphs c. (1), (4) and (5) of paragraph 1, if made for the purpose of investigating or prosecuting a person described in paragraph 2 of Article 6 and

a. in the case of subparagraphs c. (1) and (4), the request relates to an offense committed in furtherance of the purposes of an organized criminal group described in paragraph 3 of Article 6, or

b. in the case of subparagraph c. (5), any applicable conditions of Article 7 are satisfied.

3. Contributions to social security and governmental health plans, even if levied as taxes, shall not be considered as taxes for the purpose of this Treaty.

4. If the acts described in the request contain all the elements of an offense for the investigation or prosecution of which assistance is required to be or may be granted as well as all the elements of an offense for which such assistance cannot be granted, assistance shall not be granted if under the law of the requested State punishment could be imposed only for the latter offense unless it is listed in the Schedule.

Article 3

Discretionary Assistance

1. Assistance may be refused to the extent that:

a. the requested State considers that the execution of the request is likely to prejudice its sovereignty, security or similar essential interests;

b. the request is made for the purpose of prosecuting a person, other than a person described in paragraph 2 of Article 6, for acts on the basis of which he has been acquitted or convicted by a final judgment of a court in the requested State for a substantially similar offense and any sentence has been or is being carried out.

2. Before refusing any request pursuant to paragraph 1, the requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If it so determines, any conditions so imposed shall be observed in the requesting State.

Article 4 [1]

Compulsory Measures

1. In executing a request, there shall be employed in the requested State only such compulsory measures as are provided in that State for investigations or proceedings in respect of offenses committed within its jurisdiction.

2. Such measures shall be employed, even if this is not explicitly mentioned in the request, but only if the acts described in the request contain the elements, other than intent or negligence, of an offense:

[1] In a letter dated Oct. 19, 1973, Switzerland informed the United States that in the context of art. 4 the use of the German word "soll" has the same meaning as the English word "shall".

a. which would be punishable under the law in the requested State if committed within its jurisdiction and is listed in the Schedule; or

b. which is described in item 26 of the Schedule.

3. In the case of such an offense not listed in the Schedule, the Central Authority of the requested State shall determine whether the importance of the offense justifies the use of compulsory measures.

4. A decision as to whether the conditions of paragraph 2 have been met shall be made by the requested State only on the basis of its own law. Differences in technical designation and constituent elements added to establish jurisdiction shall be ignored. The Central Authority of the requested State may ignore other differences in constituent elements which do not affect the general character of the offense in that State.

5. In those cases where the conditions of paragraph 2 or 3 have not been met, assistance shall be granted to the extent that it can be furnished without the use of compulsory measures.

Article 5

Limitations on Use of Information

1. Any testimony or statements, documents, records or articles of evidence or other items, or any information contained therein, which were obtained by the requesting State from the requested State pursuant to the Treaty shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to an offense other than the offense for which assistance has been granted.

2. Nevertheless, the materials described in paragraph 1 may, after the requested State has been so advised and given an opportunity to make its views known as to the applicability of subparagraphs a, b and c of this paragraph, be used in the requesting State for the investigation or prosecution of persons who:

a. are or were suspects in an investigation or defendants in a proceeding for which assistance was granted and who are suspected or accused of having committed another offense for which assistance is required to be granted;

b. are suspected or accused of being participants in, or accessories before or after the fact to, an offense for which assistance was granted; or

c. are described in paragraph 2 of Article 6.

3. Nothing in this Treaty shall be deemed to prohibit governmental authorities in the requesting State from:

a. using the materials referred to in paragraph 1 in any investigation or proceeding concerning the civil damages connected with an investigation or proceeding for which assistance has been granted; or

b. using information or knowledge educed from the materials referred to in paragraph 1 in continuing any criminal investigation or proceeding, provided that:

(1) for such investigation or proceeding assistance may be given;

(2) prior to the date of the request for assistance referred to in paragraph 1 inquiries have already been carried out for the purpose of establishing an offense; and

(3) the materials referred to in paragraph 1 are not introduced into evidence.

Chapter II

SPECIAL PROVISIONS CONCERNING ORGANIZED CRIME

Article 6

General Requirements

1. The Contracting Parties agree to assist each other in the fight against organized crime as provided in this Chapter and with all means otherwise available under this Treaty and other provisions of law.

2. This Chapter shall apply only to investigations and proceedings involving a person who, according to the request, is or is reasonably suspected to be:

a. knowingly involved in the illegal activities of an organized criminal group, described in paragraph 3, and who is:
   (1) a member of such a group; or
   (2) an affiliate of such a group performing supervisory or managerial functions or regularly supporting it or its members by performing other important services; or
   (3) a participant in any important activity of such a group; or

b. a public official who has violated his official responsibilities in order to knowingly accomodate the desires of such a group or its members.

3. For the purposes of this Chapter the term "organized criminal group" refers to an association or group of persons combined together for a substantial or indefinite period for the purposes of obtaining monetary or commercial gains or profits for itself or for others, wholly or in part by

illegal means, and of protecting its illegal activities against criminal prosecution and which, in carrying out its purposes, in a methodical and systematic manner:

a. at least in part of its activities, commits or threatens to commit acts of violence or other acts which are likely to intimidate and are punishable in both States; and

b. either:

(1) strives to obtain influence in politics or commerce, especially in political bodies or organizations, public administrations, the judiciary, in commercial enterprises, employers' associations or trade unions or other employees' associations; or

(2) associates itself formally or informally with one or more similar associations or groups, at least one of which engages in the activities described under subparagraph b (1).

Article 7

Extent of Assistance

1. Compulsory measures referred to in Article 4 shall also be employed in the requested State even if the investigation or proceeding in the requesting State concerns acts which would not be punishable under the law in the requested State, or which are not listed in the Schedule, or neither. This paragraph is subject to the limitations of paragraph 2.

2. Assistance under this Chapter shall be rendered in investigations or proceedings involving violations of provisions on taxes on income referred to in Article I of the Convention of May 24, 1951, for the Avoidance of Double Taxation with Respect to Taxes on Income [1] only if, according to the information furnished by the requesting State:

a. the person involved in the investigation or proceeding is reasonably suspected by it of belonging to an upper echelon of an organized criminal group or of participating significantly, as a member, affiliate or otherwise, in any important activity of such a group;

b. the available evidence is in its opinion insufficient, for the purpose of a prosecution which has a reasonable prospect of success, to link such person with the crimes committed by the organized criminal group with which he is connected in the sense of paragraph 2 of Article 6; and

c. it has been reasonably concluded by it that the requested assistance will substantially facilitate the successful prosecution of such person and should result in his imprisonment for a sufficient period of time so as to have a significant adverse effect on the organized criminal group.

3. Paragraphs 1 and 2 apply only if the requesting State reasonably concludes that the securing of the information or evidence is not possible without the cooperation of the authorities in the requested State, or that it would place unreasonable burdens on the requesting State or a state or canton thereof.

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[1] TIAS 2316; 2 UST 1753.

Article 8

Applicable Procedure

1. In all cases where this Chapter requires a reasonable suspicion or a reasonable conclusion, or the opinion of the requesting State, that State shall furnish to the requested State information in its possession on the basis of which such suspicion, conclusion, or opinion has been arrived at. However, this shall not oblige the requesting State to identify the persons who have provided such information. Upon application of the requesting State, the Central Authority of the requested State shall treat any information furnished in the request as confidential.

2. The Central Authority of the requested State shall have the right to review the determination of the requesting State as to the applicability of this Chapter. It need not accept such determination where the suspicion, conclusion or opinion underlying such determination has not been made credible.

3. In rendering assistance pursuant to paragraph 2 of Article 7, all courts and authorities in the requested State shall apply such investigative measures as are provided for in its rules of criminal procedure.

4. Provisions in municipal law which impose restrictions on tax authorities concerning the disclosure of information shall not apply to disclosure to all authorities engaged in the execution of a request under paragraph 2 of Article 7. This paragraph shall not limit the applicability of provisions for disclosure otherwise provided by municipal laws in the Contracting States.

Chapter III

OBLIGATIONS OF REQUESTED STATE IN EXECUTING REQUESTS

Article 9

General Provisions for Executing Requests

1. Except as otherwise provided in this Treaty, a request shall be executed in accordance with the usual procedure under the laws applicable for investigations or proceedings in the requested State with respect to offenses committed within its jurisdiction.

2. The requested State may, upon application by the requesting State, consent to apply the procedures applicable in that State for:

a. investigations or proceedings; and

b. certification and transmission of documents, records or articles of evidence;

to the extent that such procedures are not incompatible with the laws in the requested State. A search or seizure may only be made in accordance with the law of the place where the request is executed.

3. The appropriate judicial officers and other officials in each of the two States shall, by all legal means within their power, assist in the execution of requests from the other State.

Article 10

Duty to Testify in Requested State

1. A person whose testimony or statement is requested under this Treaty shall be compelled to appear, testify and produce documents, records and articles of evidence in the same manner and to the same extent as in criminal investigations or proceedings in the requested State. Such person may not be so compelled if under the law in either State he has a right to refuse. If any person claims that such a right is applicable in

the requesting State, the requested State shall, with respect thereto, rely on a certificate of the Central Authority of the requesting State.

2. The Swiss Central Authority shall, to the extent that a right to refuse to give testimony or produce evidence is not established, provide evidence or information which would disclose facts which a bank is required to keep secret or are manufacturing or business secrets, and which affect a person who, according to the request, appears not to be connected in any way with the offense which is the basis of the request, only under the following conditions:

a. the request concerns the investigation or prosecution of a serious offense;

b. the disclosure is of importance for obtaining or proving facts which are of substantial significance for the investigation or proceeding; and

c. reasonable but unsuccessful efforts have been made in the United States to obtain the evidence or information in other ways.

3. Whenever the Swiss Central Authority determines that facts of the nature referred to in paragraph 2 would have to be disclosed in order to comply with the request, it shall request from the United States information indicating why it believes that paragraph 2 does not prevent such disclosure. Where, in the opinion of the Swiss Central Authority, such belief has not been made credible, it need not accept the determination of the United States.

4. Any acts of a witness or other person, in connection with the execution of a request, which would be punishable if committed against the administration of justice in the requested State shall be prosecuted in that State in accordance with the laws and enforcement policies therein, regardless of the procedure applied in executing the request.

Article 11

Locating Persons

If in the opinion of the requesting State information as to the location of persons who are believed to be within the territory of the requested State is of importance in an investigation or proceeding pending in the requesting State, the requested State shall make every effort to ascertain the whereabouts and addresses of such persons in its territory.

Article 12

Special Procedural Provisions

1. Upon express application of the requesting State that the testimony or statement of a person be under oath or affirmation, the requested State shall comply with such request even in the event no provisions therefor exist in its procedural laws. In that event, the time and form of the oath or affirmation shall be governed by the procedural provisions applicable in the requesting State. Where an oath is incompatible with law, an affirmation may be substituted, even though an oath has been requested, and testimony or a statement so obtained shall be admitted in the requesting State as though given under oath.

2. The presence of the suspect or defendant, his counsel or both, at the execution of a request will be permitted whenever the requesting State so requests.

3. (a) Where the presence of representatives of an authority in the requesting State at the execution of a request is required by its law in order to obtain admissible evidence, the requested State shall permit such presence.

(b) Where the requested State agrees that the complexity of the matter involved or other special factors described in the request for assistance indicate that such presence is likely to substantially facilitate a successful prosecution, it shall also permit such presence.

(c) In other cases the requested State may also permit such presence upon application by the requesting State.

(d) Nevertheless, if such presence would result in providing to the United States facts which in Switzerland a bank is required to keep secret, or facts which are manufacturing or business secrets therein, Switzerland shall permit such presence only where the requirements for disclosure in paragraph 2 of Article 10 have been met.

(e) Switzerland may, furthermore, at any time in the course of the execution of a request, exclude such representatives until it has been determined whether such requirements for disclosure are met.

4. Any person whose presence is permitted under paragraph 2 or 3 shall have, in accordance with the procedures in the requested State, the right to ask questions which are not improper under the laws of either State.

5. If in the requested State testimony or statements are sought in accordance with the procedures in the requesting State, persons giving such testimony or statements shall be entitled to retain counsel who may assist them during the proceeding. Such persons shall be expressly advised at the beginning of the proceeding of their right to counsel. After consent has been given by the Central Authority of the requesting State, counsel may be appointed, if necessary.

6. If the requesting State expressly requests that a verbatim transcript be taken, the executing authority shall make every effort to comply.

Chapter IV
OBLIGATIONS OF REQUESTING STATE

Article 13

Restrictions on Use of Testimony

Any testimony obtained pursuant to this Treaty from a citizen of the requested State, interrogated as a witness and not advised of his right to refuse testimony under paragraph 1 of Article 10, may not be introduced as evidence against such witness in a criminal proceeding in the requesting State unless the prosecution is for an offense against the administration of justice.

Article 14

Exclusion of Sanctions

No citizen of the requested State who has refused to give non-compulsory testimony or information or against whom compulsory measures had to be applied in the requested State pursuant to this Treaty shall be subjected to any legal sanction in the requesting State solely because he has exercised such rights as permitted under this Treaty.

Article 15

Protection of Secrecy

Evidence or information disclosed by the requested State pursuant to paragraph 2 of Article 10 shall, if in the opinion of that State its importance so requires and an application to that effect is made, be kept from public disclosure to the fullest extent compatible with constitutional requirements in the requesting State.

Chapter V

DOCUMENTS, RECORDS AND ARTICLES OF EVIDENCE

Article 16

Court and Investigative Documents

1. Upon request, the requested State shall make available to the requesting State on the same conditions and to the same extent as they would be available to authorities performing comparable functions in the requested State the following documents and articles:

a. judgments and decisions of courts; and

b. documents, records, and articles of evidence, including transcripts and official summaries of testimony, contained in the files of a court or an investigative authority, whether or not obtained by grand juries.

2. Items specified in subparagraph b of paragraph 1 shall be furnished only if they relate solely to a closed case, or to the extent determined by the Central Authority of the requested State in its discretion.

Article 17

Completeness of Documents

All documents and records to be furnished, whether originals or copies thereof or extracts therefrom, shall be complete and in unedited form except to the extent paragraph 1 of Article 3 applies or the documents or records would disclose facts described in paragraph 2 of Article 10 and the requirements of subparagraphs a, b and c thereof are not met. Upon application of the requesting State, the requested State shall make every effort to furnish original documents and records.

Article 18

Business Records

1. If the production of a document, including a book, paper, statement, record, account or writing, or extract therefrom, other than an official document provided for in Article 19, of whatever character and in whatever form is requested, the official executing the request shall, upon specific request of the requesting State, require the production of such document pursuant to a procedural document. The official shall interrogate under oath or affirmation the person producing such document and examine it in order to determine if it is genuine and if it was made as a memorandum or record of an act, transaction, occurrence, or event, if it was made in the regular course of business and if it was the regular course of such business to make such document at the time of the act, transaction, occurrence or event recorded therein or within a reasonable time thereafter.

2. The official shall cause a record of the testimony taken to be prepared and shall annex it to the document.

3. If the official is satisfied as to the matters set forth in paragraph 1, he shall certify as to the procedure followed and his determinations and shall authenticate by his attestation the document, or a copy thereof or extract therefrom, and the record of the testimony taken. Such certification and attestation shall be signed by the official and state his official position. The seal of the authority executing the request shall be affixed.

4. Any person subsequently transmitting the authenticated document shall certify as to the genuineness of the signature and the official position of the attesting person or, if there are any prior certifications, of the last certifying person. the final certification may be made by:

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a. an official of the Central Authority of the requested State;

b. a diplomatic or consular official of the requesting State stationed in the requested State; or

c. a diplomatic or consular official of the requested State stationed in the requesting State.

5. Where a request under this Article pertains to a pending court proceeding, the defendant, upon his application, may be present or represented by counsel or both, and may examine the person producing the document as to its genuineness and admissibility. In the event the defendant elects to be present or represented, a representative of the requesting State or a state or canton thereof may also be present and put such questions to the witness.

6. Any document, copy thereof, entry therein or extract therefrom authenticated in accordance with this Article, and not otherwise inadmissible, shall be admissible as evidence of the act, transaction, occurrence or event in any court in the requesting State without any additional foundation or authentication.

7. In the event that the genuineness of any document authenticated in accordance with this Article is denied by any party to a proceeding, he shall have the burden of establishing to the satisfaction of the court before which the proceeding is pending that such document is not genuine in order for the document to be excluded from evidence on such ground.

Article 19

Official Records

1. Upon request, the requested State shall obtain a copy of an official record, or an entry therein, and shall have it authenticated by the attestation of an authorized person. Such attestation shall be signed by, and state the official position of, the attesting person. The seal of the authority executing the request shall be affixed thereto. The procedures for certification set forth in paragraph 4 of Article 18 shall be followed.

2. In addition to any provision therefor in the municipal law of the requesting State, a copy of any official record in the requested State, or entry therein, shall be admissible in evidence without any additional foundation or authentication if authenticated and certified as provided in paragraph 1 and otherwise admissible.

Article 20

Testimony to Authenticate Documents

1. The Central Authority of the requested State shall have the authority to summon persons to appear in that State before representatives of the requesting State or a state or canton thereof in order to produce documents, records or articles of evidence supplied or to be supplied by the requested State and give testimony with respect thereto, whenever, under the applicable law in the requesting State, that is necessary for their admissibility in evidence in a criminal proceeding and such State makes a request to that effect.

2. The Central Authority of the requested State shall have the right to designate a representative to be present at the proceeding under paragraph 1. He shall be entitled to object to questions which either:

a. are incompatible with the law and practices in the requested State; or

b. go beyond the scope of paragraph 1.

Article 21

Rights in Articles of Evidence

If the requested State, a state or canton thereof, or a third party claims title or other rights in documents, records or articles of evidence, the production of which was requested or effected, such rights shall be governed by the law of the place where they have been acquired. An obligation for production or surrender under this Treaty shall take precedence over the rights referred to in the preceding sentence. These rights, however, remain otherwise unaffected.

Chapter VI
SERVICE FOR REQUESTING STATE
AND RELATED PROVISIONS

Article 22

Service of Documents

1. The competent authority in the requested State shall effect service of any procedural document, including a court judgment, decision or similar document, which is transmitted to it for this purpose by the requesting State. Unless service in a particular form is requested, it may be effected by registered mail. The requested State shall, upon application, effect personal service or, if consistent with the law in the requested State, service in any other form.

2. The requested State may refuse to effect service of legal process on a person, other than a national of the requesting State, calling for his appearance as a witness in that State if the person to be served is a defendant in the criminal proceeding to which the request relates.

3. A request must be received by the Central Authority of the requested State not later than 30 days before the date set for any appearance. This time limit must be taken into consideration when setting the date for the appearance and forwarding the request. This period may be shortened by the Central Authority of the requested State in very urgent cases.

4. Proof of service shall be made by a receipt dated and signed by the person served or by a declaration specifying the form and date of service and signed by the person effecting it.

Article 23

Personal Appearance

1. When the personal appearance of a person, other than a defendant in the criminal proceeding to which the request relates, is considered especially necessary in the requesting State, such State shall so indicate in its request for service and shall state the subject matter of the interrogation. It will also indicate the kind and amount of allowances and expenses payable.

2. The executing authority shall invite the person served to appear before the appropriate authority in the requesting State and ask whether he agrees to the appearance. The requested State shall promptly notify the requesting State of the answer.

3. If requested by the requesting State, the requested State may grant an advance payment to the person agreeing to appear. This shall be recorded on the document calling for his appearance and taken into consideration by the requesting State when making payment.

Article 24

Effect of Service

1. A person, other than a national of the requesting State, who has been served with legal process calling for his appearance in the requesting State, pursuant to Article 22, shall not be subjected to any civil or criminal forfeiture, other legal sanction or measure of restraint because of his failure to comply therewith, even if the document contains a notice of penalty.

2. The effect in the proceeding to which any procedural document served pursuant to Article 22 relates, arising from a refusal to accept it or comply therewith, shall be governed by the law in the requesting State.

3. Service of a procedural document pursuant to Article 22 on a person, other than a national of the requesting State, does not confer jurisdiction in the requesting State.

Article 25

Compelling Testimony in Requesting State

1. A person appearing before an authority in the requesting State pursuant to a legal process served under this Treaty may not be compelled to give testimony, make a statement or produce a document, record or article of evidence if under the law in either State he has a right to refuse, or if paragraph 2 below is applicable. Such a right shall be deemed to exist in the requested State to the extent that it could be invoked there if the acts which are the subject of the investigation or proceeding had been committed within its jurisdiction.

2. Such a person appearing before an authority in the United States may only be compelled to give testimony, make a statement or produce a document, record or article of evidence which would disclose facts described in paragraph 2 of Article 10 to the extent that the requirements of subparagraphs a, b and c thereof are met.

3. If any person claims that a right to refuse, pursuant to paragraph 1, exists in the requested State, or invokes the restrictions of paragraph 2, the requesting State shall in that regard rely on a certificate of the Central Authority

of the requested State except that, after due consideration of the certificate, the requesting State may make its own determination as to the applicability of subparagraphs a, b and c of paragraph 2 of Article 10.

Article 26

Transfer of Arrested Persons

1. A request pursuant to Article 22 may also be made if a person held in custody by an authority in the requested State is needed as a witness or for purposes of confrontation before an authority in the requesting State.

2. The person in custody shall be made available to the requesting State if:

a. he consents;

b. no substantial extension of his custody is anticipated; and

c. the Central Authority of the requested State determines that there are no other important reasons against the transfer.

3. Execution of the request may be postponed for as long as the presence of the person is necessary for a criminal investigation or proceeding in the requested State.

4. The requesting State shall have authority, and be obligated, to keep the person in custody unless the requested State authorizes his release. The requesting State shall return the person to the custody of the requested State as soon as circumstances permit or as otherwise agreed. That person, however, shall have the right to use such remedies and recourses as are provided by the law in the requesting State to assure that his custody or return is consistent with this Article and the Constitution of that State.

5. The requesting State shall not decline to return a person transferred solely because such person is a national of that State.

Article 27

Safe Conduct

1. A person appearing before an authority in the requesting State pursuant to legal process served under this Treaty shall not be prosecuted or, except as provided in paragraph 4 of Article 26, be detained or subjected to any other restriction of his personal liberty in that State with respect to any act or conviction which preceded his departure from the requested State.

2. The restrictions of paragraph 1 shall not apply as to a person of whatever nationality appearing for the purpose of answering a criminal charge with respect to any act or conviction which is mentioned in the document calling for his appearance, or a lesser included offense.

3. The safe conduct provided in this Article shall cease if ten days after the person appearing has been officially notified that his appearance is no longer required he has not used the opportunity to leave the requesting State or, after having left it, has returned.

Chapter VII
GENERAL PROCEDURES

Article 28

Central Authority

1. Requests for assistance shall be handled by a Central Authority. For the United States, the Central Authority shall be the Attorney General or his designee. For Switzerland, the Central Authority shall be the Division of Police of the Federal Department of Justice and Police in Bern.

2. Such requests which are approved by the Central Authority of the requesting State shall be made by that Authority on behalf of federal, state or cantonal courts or authorities which by law have been authorized to investigate or prosecute offenses.

3. The Central Authorities of the two States may communicate with each other directly for the purpose of carrying out the provisions of this Treaty.

Article 29

Content of Requests

1. A request for assistance shall indicate the name of the authority conducting the investigation or proceeding to which the request relates and insofar as possible shall also indicate:

a. the subject matter and nature of the investigation or proceeding and, except in cases of requests for service, a description of the essential acts alleged or sought to be ascertained;

b. the principal need for the evidence or information sought; and

c. the full name, place and date of birth, address and any other information which may aid in the identification of the person or persons who are at the time of the request the subject of the investigation or proceeding.

2. Such requests, to the extent necessary and insofar as possible, shall include:

a. information described under subparagraph c of paragraph 1 concerning any witness or other person who is affected by the request;

b. a description of the particular procedure to be followed;

c. a statement as to whether sworn or affirmed testimony or statements are required;

d. a description of the information, statement or testimony sought;

e. a description of the documents, records or articles of evidence to be produced or preserved as well as a description of the appropriate person to be asked to produce them and the form in which they should be reproduced and authenticated; and

f. information as to the allowances and expenses to which a person appearing in the requesting State will be entitled.

Article 30

Language

1. Requests for assistance and all accompanying documents shall be accompanied by a translation into French in the case of a request to Switzerland, and into English in the case of a request to the United States. The Swiss Central Authority may, whenever necessary, request a translation into German or Italian instead of French.

2. The translation of all transcripts, statements, or documents made, or documents or records obtained, in executing the request shall be incumbent upon the requesting State.

Article 31

Execution of Requests

1. If, in the opinion of the Central Authority of the requested State, a request does not comply with the provisions of this Treaty, it shall immediately so advise the Central Authority of the requesting State, giving the reasons therefor. The Central Authority of the requested State may take such preliminary action as it may deem advisable.

2. If the request complies with the Treaty, the Central Authority of the requested State shall transmit the request for execution to the federal, state or cantonal court or authority having jurisdiction or selected by the Central Authority as appropriate. The court or authority to which a request is transmitted shall have all of the jurisdiction, authority and power in executing the request which it has in investigations or proceedings with respect to an offense committed within its jurisdiction. In the case of a request by

Switzerland, this paragraph shall authorize the use of grand juries to compel the attendance and testimony of witnesses and the production of documents, records and articles of evidence.

3. The court or authority to which a request is transmitted pursuant to paragraph 2 shall, when necessary, issue a procedural document in accordance with its own procedural law to require the attendance and statement or testimony of persons, or the production or preservation of documents, records or articles of evidence.

4. With the consent of the Central Authority of the requesting State, execution of a request may be entrusted to an appropriate private party, if circumstances so require.

5. A request shall be executed as promptly as circumstances permit.

Article 32

Return of Completed Requests

1. Upon completion of a request, the executing authority shall return the original request together with all information and evidence obtained, indicating place and time of execution, to the Central Authority of the requested State. The latter shall forward it to the Central Authority of the requesting State.

2. The delivery of documents, records or articles of evidence may be postponed if they are needed in an official action pending in the requested State and, in case of documents or records, copies have been offered to the requesting State.

Article 33

Inability to Comply

The requested State shall promptly inform the requesting State with a brief statement of the reasons when a request cannot be fully complied with because:

a. of the limitations of this Treaty;

b. after diligent search, the person whose testimony or statement is sought or who is to be served cannot be located or is believed to be dead;

c. after diligent search, the evidence cannot be located; or

d. of other physical impediments.

Article 34

Costs of Assistance

1. The following expenses incurred by an authority in the requested State in carrying out a request shall, upon application, be paid or reimbursed by the requesting State: travel expenses; fees of experts; costs of stenographic reporting by other than salaried government employees; costs of interpreters; costs of translation; and fees of private counsel appointed with the approval of the requesting State for a person giving testimony or for a defendant.

2. No reimbursement shall be claimed for any other expenses.

3. All expenses incurred in relation to a request pursuant to Article 26 shall be borne by the requesting State.

4. No bond, guarantee, or other security for the expected costs shall be required.

Article 35

Return of Articles of Evidence

Any original documents, records or articles of evidence, delivered in execution of a request, shall be returned by the requesting State as soon as possible, unless the requested State declares that return will not be required. However, an authority in the requesting State shall be entitled to retain articles for disposition in accordance with its law if such articles belong to persons in that State and if no title or other rights are claimed in such articles by a person in the requested State, or if any claims with respect to such rights have been secured.

Chapter VIII

NOTICE AND REVIEW OF DETERMINATIONS

Article 36

Notice

Upon receipt of a request for assistance, the requested State shall notify:

a. any person from whom a statement or testimony or documents, records, or articles of evidence are sought;

b. any suspect or defendant in a criminal investigation or proceeding in the requesting State who resides in the requested State if the municipal law in the requesting State generally or for admissibility of evidence so requires, and that State so requests; and

c. any defendant in a criminal proceeding in the requesting State, where the law in the requested State requires such notice.

Article 37

Review of Determinations

1. The existence of restrictions in this Treaty shall not give rise to a right on the part of any person to take any action in the United States to suppress or exclude any evidence or to obtain other judicial relief in connection with requests under this Treaty, except with respect to paragraph 2 of Article 9; paragraph 1 of Article 10; Article 13; paragraph 7 of Article 18; paragraph 1 of Article 25; and Articles 26 and 27.

2. The right to and procedures for appeal in Switzerland against decisions of Swiss authorities in connection with requests under this Treaty shall be regulated in accordance with this Treaty by domestic legislation.

3. In the case of any claim that a State, either as the requesting State or the requested State, has failed to comply with obligations imposed by this Treaty and as to such claim a remedy is not provided by paragraph 1 or 2, the claimant may inform the Central Authority of the other State. Where such claim is deemed by that other State to require explanation, an inquiry shall be put to the first-mentioned State; if necessary, the matter shall be resolved under Article 39.

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Chapter IX
FINAL PROVISIONS

Article 38

Effect on Other Treaties and Municipal Laws

1. Whenever the procedures provided by this Treaty would facilitate assistance in criminal matters between the Contracting Parties provided under any other convention or under the law in the requested State, the procedure provided by this Treaty shall be used to furnish such assistance. Assistance and procedures provided by this Treaty shall be without prejudice to, and shall not prevent or restrict, any available under any other international convention or arrangement or under the municipal laws in the Contracting States.

2. This Treaty shall not prevent the Contracting Parties from conducting investigations and proceedings in criminal matters in accordance with their respective municipal laws.

3. The provisions of this Treaty shall take precedence over any inconsistent provisions of the municipal laws in the Contracting States.

4. The furnishing of information for use in cases concerning taxes which come under the Convention of May 24, 1951, for the Avoidance of Double Taxation with Respect to Taxes on Income, shall be governed exclusively by the provisions thereof, except for investigations or proceedings described in Chapter II of this Treaty to the extent that the conditions in paragraph 2 of Article 7 are satisfied.

Article 39

Consultation and Arbitration

1. When it appears advisable, representatives of the Central Authorities may exchange views in writing or meet together for an oral exchange of opinions on the interpretation, application or operation of this Treaty generally or as to a specific case.

2. The Central Authorities shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Treaty. Any dispute between the Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily resolved by the Central Authorities or through diplomatic negotiation between the Contracting Parties, shall, unless they agree to settlement by some other means, be submitted, upon request of either Contracting Party, to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator who shall be a national of that State and these two arbitrators shall nominate a chairman who shall be a national and resident of a third State.

3. If either Contracting Party fails to appoint its arbitrator within three months from the date of the request for the submission of the dispute to arbitration, he shall be appointed, at the request of either Party, by the President of the International Court of Justice.

4. If both arbitrators cannot agree upon the choice of a chairman within two months following their appointment, he shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs 3 and 4, the President of the International Court of Justice is prevented from acting or is a national of one of the Parties, the appointments shall be made by the Vice-President. If the Vice-President is prevented from acting or is a national of one of the Parties, the appointments shall be made by the next senior Judge of the Court who is not a national of either Party.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

7. The decisions of the tribunal shall be binding on the Contracting Parties.

Article 40

Definition of Terms

1. In this Treaty:

a. the terms "requesting State" and "requested State" shall be deemed to mean the United States of America or the Swiss Confederation, as the context requires;

b. the term "state" or "states" shall be deemed to mean any one or more of the states of the United States of America, its territories and possessions, the District of Columbia and the Commonwealth of Puerto Rico, as the context requires;

c. the term "canton" or "cantons" shall be deemed to mean any one or more of the cantons of the Swiss Confederation;

d. in any place where the word "in" precedes "requesting State" or "requested State", the phrase is used to refer to all of the territory under the jurisdiction of the United States including its states as defined in subparagraph b, and subdivisions thereof, or to the territory of Switzerland, including its cantons, as, and to the extent, the context requires; and

e. references to law or procedure in the requesting State or law or procedure to be used in executing requests, are, respectively, intended to refer to the law or procedure which is applicable to the investigation or proceeding being conducted or which would ordinarily be used in comparable investigations or proceedings by the authority executing the request.

2. Where a provision of this Treaty requires the use of a seal by an authority, other than the Central Authority, that authority may employ a hand stamp in lieu thereof, if that authority customarily uses such a stamp in connection with its own matters of like importance. The imprint of such stamp shall be treated as a seal for the purposes of this Treaty and the admissibility of evidence.

3. The expression "articles of evidence" shall not be construed to exclude items which may not be admissible in evidence.

4. Provisions in this Treaty as to admissibility of evidence shall not affect the principle of free consideration of evidence insofar as the courts of Switzerland are concerned.

5. References to assistance required to be, or which may be, furnished pursuant to this Treaty shall be deemed to include assistance of a compulsory as well as noncompulsory nature.

6. References to a "request" or "request for assistance" shall be deemed to include any attachments and supplements thereto.

7. References to "acts" in connection with offenses shall be deemed to include omissions.

8. The term "defendant" shall, unless the context otherwise indicates, be deemed to include a suspect who is a subject of an investigation.

9. The term "counsel" shall be deemed to mean counsel admitted in either State.

10. The term "antitrust laws", as applied to laws in the United States, refers to those provisions compiled in Chapter 1, Title 15, United States Code, and Chapter 2 of the same Title up to but not including Section 77a, et seq.

Article 41

Entry into Force and Termination

1. This Treaty shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force 180 days after the date of the exchange of the instruments of ratification [1] and apply with respect to acts committed before or after entry into force of this Treaty.

3. This Treaty may be terminated by either Contracting Party at any time after five years from entry into force, provided that at least six months prior notice of termination has been given in writing.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Treaty.

DONE at Bern, in duplicate, in the English and German languages, the two texts being equally authoritative, this 25th of May, 1973.

For the President of the United States of America:

Thomas J. Stoessel [2]
Shelby Cullom Davis [3]

For the Swiss Federal Council:

A. Weitnauer [4]

[SEAL]

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[1] Jan. 23, 1977.
[2] Walter J. Stoessel
[3] Shelby Cullom Davis
[4] A. Weitnauer

SCHEDULE

OFFENSES FOR WHICH COMPULSORY MEASURES ARE AVAILABLE

1. Murder.
2. Voluntary manslaughter.
3. Involuntary manslaughter.
4. Malicious wounding; inflicting grievous bodily harm intentionally or through gross negligence.
5. Threat to commit murder; threat to inflict grievous bodily harm.
6. Unlawful throwing or application of any corrosive or injurious substances upon the person of another.
7. Kidnaping; false imprisonment or other unlawful deprivation of the freedom of an individual.
8. Willful nonsupport or willful abandonment of a minor or other dependent person when the life of that minor or other dependent person is or is likely to be injured or endangered.
9. Rape; indecent assault.
10. Unlawful sexual acts with or upon children under the age of sixteen years.
11. Illegal abortion.
12. Traffic in women and children.
13. Bigamy.
14. Robbery.
15. Larceny; burglary; house-breaking or shop-breaking.
16. Embezzlement; misapplication or misuse of funds.

17. Extortion; blackmail.

18. Receiving or transporting money, securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.

19. Fraud, including:
    a. obtaining property, services, money or securities by false pretenses or by defrauding by means of deceit, falsehood or any fraudulent means;
    b. fraud against the requesting State, its states or cantons or municipalities thereof;
    c. fraud or breach of trust committed by any person;
    d. use of the mails or other means of communication with intent to defraud or deceive, as punishable under the laws of the requesting State.

20. Fraudulent bankruptcy.

21. False business declarations regarding companies and cooperative associations, inducing speculation, unfaithful management, suppression of documents.

22. Bribery, including soliciting, offering and accepting.

23. Forgery and counterfeiting, including:
    a. the counterfeiting or forgery of public or private securities, obligations, instructions to make payment, invoices, instruments of credit or other instruments;
    b. the counterfeiting or alteration of coin or money;
    c. the counterfeiting or forgery of public seals, stamps or marks;
    d. the fraudulent use of the foregoing counterfeited or forged articles;
    e. knowingly and without lawful authority, making or having in possession any instrument, instrumentality, tool or machine adapted or intended for the counterfeiting of money, whether coin or paper.

24. Knowingly and willfully making, directly or through another, a false, fictitious or fraudulent statement or representation in a matter within the jurisdiction of any department or agency in the requesting State, and relating to an offense mentioned in this Schedule or otherwise falling under this Treaty.

25. Perjury, subornation of perjury and other false statements under oath.

26. Offenses against the laws relating to bookmaking, lotteries and gambling when conducted as a business.

27. Arson.

28. Willful and unlawful destruction or obstruction of a railroad, aircraft, vessel or other means of transportation or any malicious act done with intent to endanger the safety of any person travelling upon a railroad, or in any aircraft, vessel or other means of transportation.

29. Piracy; mutiny or revolt on board an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel; any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft or vessel.

30. Offenses against laws (whether in the form of tax laws or other laws) prohibiting, restricting or controlling the traffic in, importation or exportation, possession, concealment, manufacture, production or use of:

    a. narcotic drugs, cannabis sativa-L, psychotropic drugs, cocaine and its derivatives;

    b. poisonous chemicals and substances injurious to health;

    c. firearms, other weapons, explosive and incendiary devices;

    when violation of such laws causes the violator to be liable to criminal prosecution and imprisonment.

31. Unlawful obstruction of court proceedings or proceedings before governmental bodies or interference with an investigation of a violation of a criminal statute by the influencing, bribing, impeding, threatening, or injuring of any officer of the court, juror, witness, or duly authorized criminal investigator.

32. Unlawful abuse of official authority which results in deprivation of the life, liberty or property of any person.

33. Unlawful injury, intimidation or interference with voting or candidacy for public office, jury service, government employment, or the receipt or enjoyment of benefits provided by government agencies.

34. Attempts to commit, conspiracy to commit, or participation in, any of the offenses enumerated in the preceding paragraphs of this Schedule; accessory after the fact to the commission of any of the offenses enumerated in this Schedule.

35. Any offense of which one of the above listed offenses is a substantial element, even if, for purposes of jurisdiction of the United States Government, elements such as transporting, transportation, the use of the mails or interstate facilities are also included.

TREATY BETWEEN THE U.S. AND ITALY IN CRIMINAL MATTERS

98TH CONGRESS } SENATE | EXEC. REPT. 98-36
2d Session

ORIGINAL

MUTUAL LEGAL ASSISTANCE TREATY WITH ITALY

JUNE 20, 1984.—Ordered to be printed

Mr PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 98-25]

The Committee on Foreign Relations, to which was referred the Treaty on Mutual Legal Assistance Between the United States of America and the Italian Republic, signed at Rome on November 9, 1982, having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The Treaty provides for assistance in all criminal investigations or proceedings. As a result, mutual assistance could be made available at both the investigatory and trial stages. This would include Grand Jury proceedings in the United States (Article 1).

The kinds of assistance provided for under the Treaty include but are not necessarily limited to:

a. locating persons;
b. serving documents;
c. producing documents and records;
d. executing requests for search and seizure;
e. taking testimony;
f. transferring persons for testimonial purposes;
g. immobilizing forfeiting assets. (Article 1)

Background

The traditional procedure for obtaining evidence from foreign countries (see U.S.C. 1782) is by the cumbersome, time-consuming and extremely limited process of letters rogatory.[1]

The Treaty with Italy covers mutual assistance in criminal matters. Previous treaties have been entered into with Switzerland, Turkey, Colombia, and the Netherlands

One commentator writing about the Swiss treaty noted:

> The United States has shown a new pragmatic willingness to engage in concerned action in order to fill the growing need for an international practice with respect to legal assistance in criminal matters. The United States is thus moving to fulfill its obligations as a member of the world community as well as to extend the reach of its own proceedings.[2]

Many of the provisions in the new agreement derive from the previous treaties.

The new treaty is intended to meet the diverse needs of the numerous enforcement agencies that may be involved in criminal proceedings. Where mutually agreeable, informal procedures will be employed to obtain evidence and/or testimony. Where informal procedures are inappropriate formal requirements have been established through which the treaties objectives of legal assistance can be achieved.

The treaty will address a variety of criminal activities, but especially drug trafficking taking place in one or both of the Contracting States.

Committee Action and Recommendations

The Committee on Foreign Relations held a public hearing on the Mutual Legal Assistance Treaty with Italy on June 14, 1984 at which time Mr. Daniel McGovern, Deputy Legal Advisor, Department of State and Mr. Mark Richard, Deputy Assistant Attorney General, Department of Justice, testified in its support. A public witness, Mr. Nick Navarro of Dade County, Florida also testified that the Treaty can serve significant law enforcement objectives.

On June 19, 1984, at its business meeting, the Committee on Foreign Relations considered the Mutual Legal Assistance Treaty with Italy in open session. At that time, the Committee, by a voice vote, ordered it reported favorably to the Senate for its advice and consent.

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[1] "Letters rogatory are the medium, in effect, whereby one country speaking through one of its courts, requests another country, acting through its own courts and by methods of court procedure peculiar thereto, and entirely within the latter's control, to assist the Administration of justice in the former country, such request being made, and being usually granted, by reason of the comity existing between nations in ordinary peaceful times. *The Signe Tiedemann v. The Signe* etc., 15 F. Supp. 519, 520 (E.D. La. 1936)

[2] Johnson, Prof. W., "Judicial Assistance—Criminal Procedure," Harvard International Law Journal, pp. 389–401 at p. 390

SECTION-BY-SECTION ANALYSIS

The U.S. Delegation composed of representatives from the Departments of State and Justice has provided the Committee with the following section-by-section analysis of the Treaty.

Article-by-Article Analysis

Article 1: Obligation to Render Assistance.—Paragraph 1 sets forth the obligation of the Parties to provide assistance to each other in criminal investigations and proceedings. Assistance is available during all phases of investigation and prosecution. Thus, the United States will be able to obtain assistance prior to submission of a matter to a grand jury, in aid of a grand jury investigation, and after indictment. See Memorandum of Understanding submitted with the Treaty (Memorandum of Understanding).

Paragraph 2 lists the principal types of assistance available in the order dealt with in the Treaty. This list is not all inclusive. The Treaty contemplates that assistance not specifically designated may be requested and obtained to the extent that providing such assistance is not precluded by the laws of the requested country.

Paragraph 3 provides that duality of criminality and jurisdiction are not prerequisites to assistance. Except as provided in Article 13, a requested country may not refuse assistance solely because it does not criminally sanction the acts under investigation by the requesting country or because it would lack jurisdiction in similar circumstances to prosecute an offense based on such acts. This provision enhances the ability of the Parties to investigate and prosecute certain economic and fiscal offenses for which assistance might not otherwise be available. This concept of assistance has been included in all recent United States treaties on mutual assistance in criminal matters.

Paragraph 4 provides that the Treaty is intended solely for the use of the law enforcement authorities of the Parties. With respect to the United States, it permits agencies with criminal investigative functions, such as the Securities and Exchange Commission and the Internal Revenue Service, to obtain assistance in connection with the performance of those functions. See Memorandum of Understanding. Legislative bodies, administrative agencies in the performance of their noncriminal investigative functions, and private parties may not obtain assistance pursuant to the Treaty. However, as Article 19(1) makes clear, the Treaty does not in any way restrict their ability to obtain assistance through other methods such as letters rogatory.

Article 2: Central Authority.—As is the standard practice in mutual assistance treaties in criminal matters, the Central Authorities of the respective Parties are responsible for the operation of the Treaty. Requests and executed requests will be transmitted directly between the Central Authorities—not through the slower, cumbersome channels required for the transmission of letters rogatory. The Central Authorities have the responsibility to insure that requests comply with the requirements of the Treaty, are executed promptly, and are returned promptly to the requesting country, together with the information and evidence obtained, upon execution by the competent authorities of the requested country.

The Central Authority for the United States will be the Attorney General or his designee. See 28 C.F.R. § 0.64-1 and Criminal Division Directive No. 81. The Central Authority for Italy will be the Minister of Grace and Justice or his designee.

Article 3: Contents of a Request.—This Article is similar to articles in the Swiss and Dutch mutual assistance treaties. Paragraph 1 enumerates the information which must be included in each request. Paragraph 2 sets forth additional information which should be provided to the extent possible when appropriate.

This Article provides a checklist of information for officials initiating requests to assure that the requests submitted adequately inform the authorities in the requested country of the nature of the investigation, the evidence or information sought, the purpose for which it is sought, and other information to facilitate execution of the request and to describe any special procedures to be used in its execution.

Paragraph 3 requires that a request seeking the appearance of a witness in the requesting country set forth the allowances and expenses to which that person will be entitled.

Paragraph 4 requires the request and accompanying documents to be in both English and Italian. The requested country may translate the request and accompanying documents when necessary; however, the requesting country will be responsible for all translation expenses. See Article 7(a). There are no certification requirements with respect to the request and translations.

Article 4: Execution of a Request.—Paragraph 1 commits the Central Authority of the requested country to promptly execute the request or transmit it to another governmental authority having the power to execute it. If the request does not meet the requirements of the Treaty, the Central Authority of the requested country will inform the Central Authority of the requesting country what must be done to meet those requirements. The competent officials of the requested country are obligated to do everything within their power to bring about the successful execution of requests. Finally, the courts of the requested country are required to issue subpoenas, search warrants, and other orders necessary to the execution of a request. See also 28 U.S.C. 1782.

Paragraph 2 provides that requests are to be executed in accordance with the laws and procedures of the requested country and the provisions of the Treaty. However, to the extent that the requesting country requests that specific procedures be followed in the execution of the request, the requested country is obligated to follow those procedures unless precluded from doing so by its laws. As reflected in the Memorandum of Understanding, this provision, among other things, commits Italy to follow the procedures, specified in a United States request, necessary to the proper authentication of documentary evidence provided under Article 12 and 13, and to laying the proper predicate, in conformance with the Federal Rules of Evidence, for the admissibility of such documentary evidence as an exception to the hearsay rule.

Article 5: Limitations on Compliance.—Paragraph 1 sets forth the reasons for which a requested country, in its discretion, may deny assistance. This discretion will be exercised by the Central

Authority of the requested country after consultation with other affected governmental agencies of that country.

Subparagraph (a) provides assistance may be denied if execution of the request would prejudice the security of the requested country. The right to refuse assistance on this ground is intended to protect national security information (e.g., classified documents). This subparagraph also provides that assistance may be refused if execution of the request would prejudice "other essential public interests" of the requested country. Assistance might be refused on this ground if granting assistance could lead to the disclosure of the identity of a key informant—especially when the life of the informant or his family might be jeopardized by such disclosure. It might also be refused on this ground if granting assistance would lead to the disclosure of trade secrets or other information which could cause great economic damage to innocent third parties. This basis for refusal has purposely been left open-ended to permit assistance to be refused where very important interests of the requested country would be severely affected if assistance were granted.

Subparagraph (b) permits a requested country to refuse assistance when the request relates to an offense under military law which is not an offense under ordinary criminal law (e.g., desertion), or when it relates to a political offense. Both Parties, in view of their commitments to combat terrorism, intend not to invoke this ground for refusal in connection with a request relating to the investigation or prosecution of an act of terrorism.

Subparagraph (c) permits the requested country to deny assistance when the request does not comply with the Treaty's requirements. In such instances, the Central Authority of the requested country will inform the Central Authority of the requesting country of the measures necessary to bring the request into compliance.

Paragraph 2 obligates the requested country to determine whether assistance can be given subject to such conditions as it deems necessary before it denies assistance for any of the reasons set forth in paragraph 1. If the requested country imposes such a condition, the requesting country must agree to comply in order to receive the requested assistance.

Paragraph 3 permits a requested country to postpone execution of a request, or to subject its execution to conditions, if execution would interfere with a pending investigation or proceeding.

Paragraph 4 obligates the requested country to provide reasons for any partial or total denial of assistance.

Article 6: Return of a Completed Request.—Paragraph 1 provides that, unless otherwise agreed, the requested country is to return to the requesting country the original request together with all information and evidence obtained. The requested country is also obligated to note the place and time of execution of the request.

Paragraph 2 requires that, to the extent possible, all documents and records furnished pursuant to a request shall be in complete and unedited form. If the requesting country specifically requests original documents and records, the requested country is obligated to use its best efforts to comply. Such originals may be necessary to scientific tests, such as developing latent fingerprints and ink, type, and watermark evidence, and to handwriting analysis.

Article 7: Costs and Translations.—This Article follows the usual practice in United States mutual assistance treaties regarding costs. The requested country will absorb the ordinary costs, including legal representation, attendant to the execution of requests. The requesting country will pay the extraordinary costs. The Treaty apportions costs in this manner because of the expected balance of ordinary expenses incident to the reciprocal execution of requests and the relatively substantial administrative expense of accounting for such costs.

The extraordinary expenses for which the requesting country will be responsible are: translation expenses; fees of experts; travel expenses of witnesses appearing in the requesting country; and expenses relating to the transfer of persons in custody in connection with the execution of a request. Accounting for these types of expenses is relatively easy.

Article 8: Protecting Confidentiality and Restricting Use of Evidence and Information.—Paragraph 1 permits the requested country to place conditions of confidentiality on information and evidence transmitted in execution of a request and on information and evidence derived therefrom. The requesting country is obligated to comply with such conditions except to the extent it is necessary to introduce such information or evidence in a public proceeding. The ability of the United States to impose such conditions will permit it, when appropriate, to provide Italian authorities with tax information to the extent that the request for such information meets the requirements of 26 U.S.C. 6103(h) and/or 6103(i) [3] and with information obtained in the course of a grand jury investigation, pursuant to court ordered disclosure under Rule 6(e)(3)(C)(i), Federal Rules of Criminal Procedure. See Article 12(2).

Paragraph 2 permits the requesting country to request that not only the contents of its request, but also the fact that a request has been made and executed, be kept confidential by the requested country. Such confidentiality is of particular significance to the United States when assistance is sought in connection with a grand jury investigation.

Paragraph 3 requires the requesting country to obtain the consent of the requested country to use evidence obtained pursuant to a request, or information derived from such evidence, for a purpose other than as stated in the request.

Article 9: Return of Documents, Records, and Articles of Evidence.—This Article requires the requesting country, upon request, to return materials provided in execution of a request as soon as they are no longer needed.

Article 10: Locating Persons.—This Article obligates a requested country to attempt to ascertain the whereabouts of witnesses and defendants whom the requesting country believes to be in the requested country.

Article 11: Serving Documents.—Paragraph 1 requires a requested country to serve documents transmitted for that purpose. Italian authorities will make service personally or through the mails. To the extent that a specific form of service is requested by United

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[3] The Treaty is a "convention relating to the exchange of tax information" within the meaning of 26 U.S.C. 6103(k)(4).

States authorities, Article 4(a) obliges Italy to comply unless that form of service is prohibited by its laws.

Paragraphs 2 and 3 provide that a request for service of a document requiring the appearance of a person in the requesting country be transmitted a reasonable time before the scheduled appearance and be served thirty days prior to such appearance or as otherwise agreed. The Treaty does not affect the authority of United States consuls to serve subpoenas on United States nationals or residents located in Italy calling for such persons' appearance or production of documents before the issuing court. See 28 U.S.C. 1783 and Article 19(1).

Paragraph 4 provides that the requested country is to return a proof of service executed in accordance with its laws. Under Italian law, proof of service is in the form of a declaration by the serving officer that service was effected. That declaration constitutes proof of service under United States law. Cf. Rule 4(i), Federal Rules of Civil Procedure (Alternative Provisions for Service in a Foreign Country).

Article 12: Providing Documents and Records of Government Offices and Agencies.—Paragraph 1, like similar provisions in other United States mutual assistance treaties, requires a requested country to provide copies of publicly available government documents or records.

Paragraph 2 follows similar provisions in other treaties in permitting, but not requiring, a requested country to provide any government document or record which is not publicly available under the same conditions as it would be available to its own law enforcement or judicial officials. This provision must be read in conjunction with Articles 5(2), 5(3), and 8(1) permitting the requested country to impose conditions, including confidentiality, on the providing of such materials. The Treaty expresses the policy that such materials should be provided if mutually satisfactory conditions can be imposed. See Article 5(2).

Paragraph 3 establishes an alternative method of authenticating foreign public documents analogous to the method provided by the Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents. TIAS 10072; entered into force for the United States October 15, 1981. Under this provision, the only certification of authenticity necessary for such a foreign government document to be admissible in evidence in a requesting country is that of the Central Authority of the requested country. As discussed in the Memorandum of Understanding, United States requests for such documents and records will specify that Italian authorities follow procedures necessary to laying the requisite foundation to bring such documents and records within the exceptions to the hearsay rule applicable to public records. Rules 803(8) to 803(10), Federal Rules of Evidence.

Article 13: Producing Other Documents and Records.—Paragraph 1 obliges a requested country to compel the production of nongovernment documents, records, and articles to the same extent as would be required in connection with its own criminal investigations and prosecutions. When seizure pursuant to a search warrant is necessary, the Treaty requires the requesting country to provide such information as would permit the requested country to obtain

a search warrant in connection with its own criminal investigations and prosecutions. Both Parties intend that dual criminality will be a prerequisite to obtaining a search warrant. The issuance of a warrant is the lone situation in which dual criminality is required under the Treaty. See Article 1(3).

The United States generally will use subpoenas *duces tecum* to obtain the production of documents and records on Italy's behalf. Italy, like many other civil law countries, does not have a compulsory process equivalent to a subpoena *duces tecum;* therefore, it will either request the custodian of the records to produce them voluntarily or obtain a search warrant. In light of the common use of search warrants in Italy in connection with the production of documents and records in criminal investigations and cases, the United States has been assured that Italy's requirements for the issuance of such search warrants are significantly less onerous than United States requirements. Consequently, the absence of a subpoena *duces tecum* as such under Italian law will not result in a significant imbalance in the Parties' undertakings under the Treaty. In this regard, the United States has been assured by Italy that the substantial similarity of criminal tax offenses under the laws of both Parties will permit the execution of search warrants by Italian authorities in connection with United States criminal tax investigations and prosecutions.

Paragraph 2 sets forth procedures, analogous to those in Article 12(3), designed to permit United States courts to admit Italian business records on the basis of the affidavit of the custodian of those records and the appropriate certification by the Italian Central Authority. Treaty secured business records will not be admissible *per se*. However, this provision authorizes United States courts to rule that such records have sufficient guarantees of trustworthiness to be admissible in evidence. See Rules 803(6), 803(24), and 804(5), Federal Rules of Evidence. For example, a United States request for the production of the records of a specific bank account would ask the Italian authorities to: (1) locate a bank representative who has custody of the records; (2) have the bank representative prepare an affidavit describing his position as custodian of the records, identifying the records provided, affirming that they were kept in the course of a regularly conducted bank activity and were prepared at or near the time of the transactions by, or from information transmitted by, persons with knowledge of the transactions, and that it was the regular practice of the bank to make such records; and (3) have the Italian executing authority certify that the records transmitted to the Central Authority were the ones provided by the custodian whose affidavit accompanies them. During pretrial discovery, defense counsel should be provided with sufficient notice to give adequate opportunity to contest the records' trustworthiness if a basis for such a claim exists. This provision, when used as described above, constitutes a logical and appropriate extension of Rules 803(24) and 804(5).

Paragraph 2 also provides for the use of certifications by officials of the requested country as to the identity, physical integrity, and chain of custody of documents, records, and other articles seized by the authorities of the requested country in executing a request. Such certifications are intended to provide sufficient proof of the

matters to which they attest to permit the seized documents, records or other articles to be admitted in evidence without further proof of those matters.

Article 14: Taking Testimony in the Requested State.—This Article requires a requested country, in executing a request for the taking of testimony in that country, to use compulsory measures (e.g., subpoenas) to the same extent as in its internal criminal investigations and proceedings. See also Article 4. Appearance of witnesses, compliance with subpoenas, and testimony are subject to the contempt and perjury laws of the requested country. Any claim of privilege is also subject to the law of that country. Paragraph 6 provides that assertions of testimonial privilege under the laws of the requesting country are not applicable in such proceedings but are to be preserved for decision by the courts of the requesting country.

Paragraph 3 requires the requested country to permit the presence at the taking of testimony of persons concerned in the investigation or proceeding, including the defendant, defense counsel, prosecutors and law enforcement agents from the requesting country. An Italian government attorney will also be present at all such proceedings in Italy.

Paragraphs 4 and 5 permit those present to question the witness or to propose questions. Ordinarily, all questioning in such proceedings in Italy will be conducted by an Italian judge, whose questions will include those posed by the interested parties. This procedure permits effective cross-examination of a witness for purposes of Rule 15, Federal Rules of Criminal Procedure, and the Confrontation Clause of the Sixth Amendment.

Article 15: Taking Testimony in the Requesting State.—This Article is the first of two major innovations in the Treaty. It provides that, upon request, a requested country is obligated to obtain an order compelling a person to appear and testify in a proceeding in the requesting country if: the requested country has no reasonable basis for denying the request; the person's testimony could be compelled in connection with an investigation or proceeding being conducted by that country in similar circumstances; and the Central Authority of the requesting country certifies that the person's testimony is relevant and material.[4]

Paragraph 2 provides that a witness who fails to appear pursuant to such an order is subject to the same sanctions under the laws of the requested country as would be applicable if that witness failed to appear in a criminal proceeding in that country. Such failure to appear would not subject the person to any sanction under the laws of the requesting country. But see 28 U.S.C. 1783 (United States subpoenas served in foreign countries on American nation-

[4] The phrase "relevant and material" is intended by both the United States and Italy to preclude use of this Article with respect to relatively unimportant, yet necessary, witnesses. For example, it is not intended for a requested country to seek a court order to compel the appearance of a custodian of records in the requesting country unless the manner in which the records were kept or other factors relating to their trustworthiness is a critical issue at trial. Therefore, this Article should not be interpreted as making such witnesses available for trial within the meaning of Rule 15(e), Federal Rules of Criminal Procedure. Moreover, an important last witness whose appearance cannot be obtained either because Italy refuses to compel his appearance, or because the witness contumaciously refuses to travel to the United States pursuant to an Italian court order, should be regarded as unavailable for purposes of Rule 15(e).

als and residents) and *United States* v. *Blackmer*, 284 U.S. 421 (1932).

This Article must be read in conjunction with Article 17 (Safe Conduct) which provides that a person appearing before an authority in the requesting country pursuant to a request may not be sued civilly in, or be detained by, the requesting country for any act or conviction which preceded departure from the requested country (except insofar as such person was in custody in the requested country and was transferred pursuant to Article 16). Article 17 additionally immunizes a witness with respect to truthful testimony given in a proceeding in the requesting country pursuant to a request, thereby overcoming any problems relating to differences in the privilege against self-incrimination under the laws of Italy and the United States.[5]

The appearance of a witness in the United States pursuant to this Article ordinarily will be necessary only at trial in order to permit the presentation of live, cross-examined testimony. Italian judges routinely come to the United States to take the testimony of witnesses and generally will not require the appearance of witnesses in Italy. Moreover, Articles 12 and 13 provide a method for obtaining the introduction of documentary evidence obtained in the requested country without requiring the testimony of witnesses in the requesting country. Consequently, this Article will be used primarily by the United States for obtaining the testimony of important fact witnesses located in Italy at criminal trials in this country. Finally, since the requested country is to employ the procedures it uses in domestic cases when it compels a witness to appear and testify in the requesting country, witnesses in the United States, whose appearance and testimony in Italy is sought pursuant to the Treaty, will be able to move the court to quash the subpoena if compliance would be unreasonable or oppressive. See *Amsler* v. *United States*, 381 F.2d 37, 51 (9th Cir. 1967). Cf. Rule 17(c), Federal Rules of Criminal Procedure.

The concept upon which Article 15 is based—the desirability of providing a country investigating and/or prosecuting a serious criminal offense with the ability to obtain the compulsory appearance and testimony, before its grand juries and courts, of witnesses located in foreign countries—has been uniformly accepted at the interstate level. See *Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings*, 11 U.L.A. 1 (in force in 49 states, the District of Columbia, Puerto Rico, and the Virgin Islands). The constitutionality of the Uniform Act has been upheld by the Supreme Court. *New York* v. *O'Neill*, 359 U.S. 1 (1959). This Treaty is the first to extend this concept to the international level.

The rationale the Supreme Court adopted in upholding the constitutionality of the Uniform Act is wholly transferable to the international level. First, as the Court stated in ruling against the contention that the Uniform Act violated the privileges and immu-

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[5] Although the language of the Treaty does not precisely track the language of 18 U.S.C. 6002, the immunity provided under this provision is intended to be coextensive with the "use immunity" provided by Section 6002.

nities of American citizens of free ingress and egress among the states:

> There are restrictions on the claimed constitutional right. One such restriction derives from the obligation to give testimony. This obligation had been sustained where it necessitated travel across the Atlantic Ocean. *Blackmer* v. *United States*, 284 U.S. 421. More fundamentally, this case does not involve freedom of travel in its essential sense. At most it represents a temporary interference with voluntary travel. Particularly is this so in an era of jet transportation when vast distances can be traversed in a matter of hours. 359 U.S. 1, at 7.

While Article 15 permits persons in the United States to be compelled "to travel across the Atlantic" to give testimony in a proceeding in Italy, the inconvenience which may be caused to such persons is not significantly different from that existing under the federal system in this country. This inconvenience is more than compensated for by the reciprocal ability of the United States to obtain the compelled appearance and testimony of a noncitizen or nonresident witness in connection with criminal investigations and proceedings in the United States—an ability which will further enhance the fairness of United States criminal trials.

Second, the due process guarantees accorded persons in the United States ordered to appear and give testimony in Italy are even greater than those approved by the Supreme Court in *O'Neill*. As under the Uniform Act, such persons can move to quash such orders on the ground that they are unreasonable or oppressive, and persons ordered to appear in the requesting jurisdiction are granted safe conduct while there. See Article 17(1)(a). In addition, the Treaty affords such persons immunity with respect to any truthful testimony given in the requesting country pursuant to a request. See Article 17(1)(b). The Uniform Act provides no similar protection to persons ordered to give testimony in other states. Plainly, the Treaty and United States laws provide sufficient protection to such persons to meet the due process standards enunciated by the Supreme Court in *O'Neill*. 359 U.S. 1, at 8.

The same presumption of constitutionality supporting the multistate legislative scheme of the Uniform Act applies to treaties regulating law enforcement relationships between the United States and other countries. See 359 U.S. 1, at 5–6. Unless the Constitution clearly prevents United States courts from ordering persons to travel to Italy at the expense of the Italian government to appear and testify, under guarantees of safe conduct and immunity, in connection with a criminal investigation or proceeding in Italy, Article 15 is a constitutional grant of power. See, *Reid* v. *Covert*, 354 U.S. 1, 16–18 (1957). No such constitutional bar exists. Indeed, the same need to permit "an interplay of living forces of government to meet the evolving needs of a[n increasingly] complex society," which underlies the Supreme Court's decision in *O'Neill*, is equally applicable to the constitutional justification of similar arrangements through treaties. 359 U.S. 1, at 11.

The United States has long been able to extradite fugitives, including United States citizens, to foreign countries. However, prior

to this Treaty, it has not had the authority to take the far less intrusive step of seeking its courts, at the request of a treaty partner, to compel the appearance of witnesses from this country at the trial of such fugitives in the courts of a treaty partner. Similarly, the United States has long been able to secure the extradition of fugitives from foreign countries, but it previously has never been able to request those countries to compel the appearance and testimony of witnesses from those countries at the trial of such fugitives in the United States. The compelled appearance of a witness in a requesting country is a constitutional and highly desirable addition to the tools available to combat the rapidly increasing level of international criminal activity.

Article 16: Transferring Persons in Custody for Testimonial Purposes.—This Article, similar to ones in the Dutch and Turkish mutual assistance treaties, provides for persons in custody in a requested country needed as witnesses in a requesting country to be sent to that country, kept in custody there, and returned as soon as their presence is no longer required, without resort to the process of extradition. It also provides for defendants in custody in a requesting country, who seek to be present for confrontation purposes in a requested country, to be sent to that country, kept in custody there, and returned without resort to the process of extradition, when their presence is no longer required. In both instances, the person transferred is to receive credit for all time in custody.

The principal difference between this provision and similar provisions in other treaties is that only under this Treaty can a witness in custody in the requested country be compelled by its courts to appear and testify in the requesting country. See Article 15. Within the United States such matters are dealt with by the *Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings, supra*, and the *Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act*, 11 U.L.A. 547 (in force in eleven states).

Article 17: Safe Conduct.—The protections afforded by paragraph 1 are set forth above in the discussion of Article 15. Paragraph 2 provides that these protections cease if the person fails to leave the requesting country within ten days of being free to do so or, having left, voluntarily returns.

Article 18: Immobilization and Forfeiture of Assets.—This Article is the second major innovation in the Treaty. Paragraph 1 provides in emergency situations for the immobilization of assets in a requested country which are subject to forfeiture to the requesting country. Paragraph 2 provides for such assets to be forfeited to the requesting country pursuant to the laws of the requested country. Such forfeiture is of great importance to depriving international drug traffickers and members of organized crime of the fruits of their criminal activity and of the means to finance further criminal activity.

Legislation will be required in both Italy and the United States to implement this provision. Proposed United States legislation has been prepared. However, the Parties agreed that ratification should not be delayed pending the passage of such legislation.

Article 19: Other Treaties and Domestic Laws.—This Article makes it clear that the Treaty is not intended to restrict assistance available through alternative channels.

Article 20: Ratification and Entry Into Force.—This Article provides that the Treaty is subject to ratification; that the instruments of ratification are to be exchanged in Washington as soon as possible; and that the Treaty shall enter into force upon the exchange of the instruments of ratification.

Article 21: Denunciation.—This Article contains standard language providing for the termination of the Treaty six months after receipt of notice to that effect by one Party from the other.

Entry Into Force

The treaty shall enter into force upon the exchange of instruments of ratification.

Resolution of Ratification

Resolved (two thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty of Mutual Legal Assistance with a related memorandum of understanding Between the United States of America and the Italian Republic signed at Rome on November 9, 1982.

TREATY BETWEEN THE U.S. AND THE U.K. CONCERNING THE CAYMAN ISLANDS

Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland Concerning the Cayman Islands Relating to Mutual Legal Assistance in Criminal Matters

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the Cayman Islands;

Desiring to improve the effectiveness of the law enforcement authorities of both the United States of America and the Cayman Islands in the investigation, prosecution, and suppression of crime through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1

SCOPE OF ASSISTANCE

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, for the investigation, prosecution, and suppression of criminal offenses of the nature and in the circumstances set out in this Treaty, including the civil and administrative proceedings referred to in paragraph 3(c) of Article 19.

2. For the purposes of paragraph 1, assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, and articles of evidence;

(c) serving documents;

(d) locating persons;

(e) transferring persons in custody for testimony;

(f) executing requests for searches and seizures;

(g) immobilizing criminally obtained assets;

(h) assistance in proceedings related to forfeiture, restitution and collection of fines; and

(i) any other steps deemed appropriate by both Central Authorities.

3. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

CENTRAL AUTHORITIES

1. A Central Authority shall be established by each Party.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by him. For the Cayman Islands, the Central Authority shall be the Cayman Mutual Legal Assistance Authority or a person designated by it.

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3. Requests under this Treaty shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

ARTICLE 3

LIMITATIONS ON ASSISTANCE

1. The assistance afforded by this Treaty shall not extend to:

(a) any matter which relates directly or indirectly to the regulation, including the imposition, calculation, and collection, of taxes, except for any matter falling within sub-paragraphs 3(d) and 3(e) of Article 19; or

(b) any conduct not punishable by imprisonment of more than one year.

2. The Central Authority of the Requested Party may deny assistance where:

(a) the request is not made in conformity with the provisions of this Treaty;

(b) the request relates to a political offense or to an offense under military law which would not be an offense under ordinary criminal law; or

(c) the request does not establish that there are reasonable grounds for believing:

(i) that the criminal offense specified in the request has been committed; and

(ii) that the information sought relates to the offense and is located in the territory of the Requested Party.

3. The Central Authority shall deny assistance where the Attorney General of the Requested Party has issued a certificate to the effect that the execution of the request is contrary to the public interest of the Requested Party.

4. Before denying assistance pursuant to this Article the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

ARTICLE 4

FORM AND CONTENTS OF REQUESTS

1. Requests shall be submitted in writing by the Central Authority of the Requesting Party in such form as may from time to time be agreed between the Central Authorities.

2. The request shall include the following:

(a) the name of the authority conducting the investigation or proceeding to which the request relates;

(b) the subject matter and nature of the investigation or proceeding for the purposes of which the request is made and in particular the criminal offense or offenses for the investigation, prosecution or suppression of which the assistance is requested;

(c) information concerning the persons involved including, where available, their full names, dates of birth, and addresses;

(d) the information relied upon in support of the request;

(e) a description of the evidence, information or other assistance sought; such description shall specify where possible the time period to which any such evidence or information relates;

(f) the purpose for which the evidence or information or other assistance is sought; and

(g) the identity and presumed location, where known, of any person from whom evidence is sought.

3. To the extent necessary and possible, a request shall also include:

(a) the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(b) available information on the identity and whereabouts of a person to be located;

(c) a precise description of the place or person to be searched and of the articles to be seized;

(d) a description of the manner in which any testimony or statement is to be taken and recorded;

(e) a list of questions to be asked of a witness;

(f) a description of any particular procedure to be followed in executing the request;

(g) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and

(h) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

ARTICLE 5

EXECUTION OF REQUESTS

1. The Central Authority of the Requested Party shall promptly execute any request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested Party shall do everything in their power to execute the request. The Courts of the Requested Party shall have jurisdiction to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested Party.

3. Requests shall be executed in accordance with the laws of the Requested Party except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested Party.

4. If execution of the request would interfere with an ongoing criminal investigation or proceeding in the territory of the Requested Party, the Central Authority of that Party may postpone execution or make execution subject to conditions determined necessary after consultations with the Requesting Party. If the Re-

questing Party accepts the assistance subject to the conditions it shall comply with the conditions.

5. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons for the denial.

ARTICLE 6

COSTS

1. The following expenses, and none other, incurred in executing a request shall be reimbursed by the Requesting Party upon application of the Central Authority of the Requested Party:

(a) travel expenses of a witness presenting testimony in the territory of the Requesting Party;

(b) fees of expert witnesses retained with the approval of the Central Authority of the Requesting Party;

(c) fees of counsel appointed or retained with the approval of the Central Authority of the Requesting Party for a witness giving testimony;

(d) reasonable costs of locating, reproducing, and transporting to the Central Authority of the Requesting Party documents or records specified in a request;

(e) costs of stenographic reports requested by the Central Authority of the Requesting Party, other than reports prepared by a salaried government employee; and

(f) reasonable costs of interpreters or translators.

2. A witness who appears in the territory of the Requesting Party pursuant to Article 10 shall be entitled to the same fees and allowances ordinarily accorded to a witness in the territory of the Requesting Party.

3. A witness who appears in the territory of the Requested Party pursuant to Article 8 shall be entitled to such fees and allowances as shall be agreed between the Central Authorities.

ARTICLE 7

LIMITATIONS ON USE

1. The Requesting Party shall not use any information or evidence obtained under this Treaty for any purposes other than for the investigation, prosecution or suppression in the territory of the Requesting Party of those criminal offenses stated in the request without the prior consent of the Requested Party.

2. Unless otherwise agreed by both Central Authorities, information or evidence furnished under this Treaty shall be kept confidential, except to the extent that the information or evidence is needed for investigations or proceedings forming part of the prosecution of a criminal offense described in the request.

3. The Central Authority of the Requesting Party may request that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaking confidentiality, the Central Authority of the Requested Party shall so inform the Cen-

tral Authority of the Requesting Party which shall then determine whether the request should nevertheless be executed.

4. Except as may be permitted under paragraph 1, any information or evidence obtained under this Treaty which has been made public in the territory of the Requesting Party in a proceeding forming part of the prosecution of a criminal offense described in the request may be used only for the following additional purposes:

(a) where a trial results in a conviction for any criminal offense within the scope of this Treaty, for any purpose against the person(s) convicted;

(b) whether or not a trial results in the conviction of any person, in the prosecution of any person for any criminal offense within the scope of this Treaty; and

(c) in civil or administrative proceedings, only if and to the extent that such proceedings relate to:

(i) the recovery of the unlawful proceeds of a criminal offense within the scope of this Treaty from a person who has knowingly received them;

(ii) the collection of tax or enforcement of tax penalties resulting from the knowing receipt of the unlawful proceeds of a criminal offense within the scope of this Treaty; or

(iii) the recovery in rem of the unlawful proceeds or instrumentalities of a criminal offense within the scope of this Treaty.

ARTICLE 8

TAKING TESTIMONY AND PRODUCING EVIDENCE IN THE TERRITORY OF THE REQUESTED PARTY

1. A person requested to testify or to produce documentary information or articles in the territory of the Requested Party may be compelled to do so in accordance with the requirements of the law of the Requested Party.

2. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the evidence shall nonetheless be taken and the claim made known to the Requesting Party for resolution by the authorities of that Party.

3. The Requesting Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.

4. The Requested Party shall authorize the presence of such persons as are specified in the request during the taking of any evidence in the territory of the Requested Party and shall allow persons designated in the request to question the person whose testimony or evidence is being taken.

5. Documentary information other than official records produced in the territory of the Requested Party pursuant to this Article shall be authenticated by the attestation of a person competent to do so in the manner indicated in Form A appended to this Treaty.

ARTICLE 9

PROVIDING RECORDS OF GOVERNMENT AGENCIES

1. The Requested Party shall provide the Requesting Party with copies of publicly available records of government departments and agencies in the territory of the Requested Party.

2. The Requested Party may provide copies of any record or information in the possession of a government department or agency in the territory of that Party but not publicly available to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities.

3. Official records produced pursuant to this Article shall be authenticated by the attestation of an authorized person in the manner in Form B appended to this Treaty. The attestation shall be signed by, and state the official position of, the attesting person, and the seal of the authority executing the request shall be affixed thereto. Authentication of official records shall be carried out under the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated 5 October 1961.

ARTICLE 10

APPEARANCE IN THE TERRITORY OF THE REQUESTING PARTY

1. When the appearance of a person who is in the territory of the Requested Party is needed in the territory of the Requesting Party for the purpose of the execution of a request under this Treaty, the Central Authority of the Requesting Party may request that the Central Authority of the other party invite the person to appear before the appropriate authority in the territory of the Requesting Party. The response of the person shall be communicated promptly to the Central Authority of the Requesting Party. Such a person shall be under no compulsion to accept such an invitation.

2. A person appearing in the territory of the Requesting Party pursuant to this Article shall not be subject to service of process or be detained or subjected to any restriction of personal liberty by reason of any acts or convictions in either the territory of the Requesting or Requested Party which preceded his departure from the territory of the Requested Party.

3. The safe conduct provided for by this Article shall cease ten days after the person has been notified in writing by the appropriate authorities that his presence is no longer required, or if the person has left the territory of the Requesting Party and voluntarily returned to it.

ARTICLE 11

TRANSFERRING PERSONS IN CUSTODY FOR TESTIMONIAL PURPOSES

1. A person in the custody of the Requested Party who is needed as a witness in connection with the execution of a request in the territory of the Requesting Party shall be transported to the territory of that Party if the person and the Requested Party consent.

2. A person in the custody of the Requesting Party whose presence in the territory of the Requested Party is needed in connection with the execution of a request under this Treaty may be transported to the territory of the Requested Party if the person and both Parties consent.

3. For the purpose of this Article:

(a) the Receiving Party shall be responsible for the safety and health of the person transferred and have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the Sending Party;

(b) the Receiving Party shall return the person transferred to the custody of the Sending Party as soon as circumstances permit or as otherwise agreed and in any event no later than the date upon which he would have been released from custody in the territory of the Sending Party; and

(c) the person transferred shall receive credit for service of the sentence imposed in the territory of the Sending Party for time served in the custody of the Receiving Party.

Article 12

LOCATION OF PERSONS

1. The Requested Party shall take all necessary measures to locate or identify persons who are believed to be in the territory of that Party and who are needed in connection with the investigation, prosecution or suppression of a criminal offense in the territory of the Requesting Party.

2. The Requested Party shall promptly communicate the results of its inquiries to the Requesting Party.

Article 13

SERVICE OF DOCUMENTS

1. The Requested Party shall effect service of any document relating to or forming part of any request for assistance properly made under the provisions of this Treaty transmitted to it for this purpose by the Requesting Party, provided that the Requested Party shall not be obliged to serve any subpoena or other process requiring the attendance of any person before any authority or tribunal in the territory of the Requesting party.

2. The Requesting Party shall transmit any such request for the service of a document inviting the appearance of a person before an authority in the territory of the Requesting Party to the Requested Party a reasonable time before the scheduled appearance.

3. The Requested Party shall return a proof of service in the manner specified in the request.

Article 14

SEARCH AND SEIZURE

1. A request for assistance pursuant to Article 1 involving the search, seizure and delivery of an article to the Requesting Party shall be executed if it includes the information justifying such action under the laws of the Requested Party.

2. Every official who has custody of a seized article shall certify the continuity of custody, the identity, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the territory of the Requesting Party as evidence of the truth of the matters set forth therein.

3. The Requested Party shall not be obliged to provide any item seized to the Requesting Party unless that Party has agreed to such terms and conditions as may be required by the Requested Party to protect third party interests in the item to be transferred.

ARTICLE 15

RETURN OF DOCUMENTS AND ARTICLES

The Requesting Party shall return any documents or articles furnished to it in the execution of a request under this Treaty as soon as possible unless the Requested Party waives the return of the documents or articles.

ARTICLE 16

PROCEEDS OF CRIME

1. The Central Authority of one Party may notify the Central Authority of the other Party when it has reason to believe that proceeds of a criminal offense are located in the territory of the other Party.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings related to:

(a) the forfeiture of the proceeds of criminal offenses;

(b) restitution to the victims of criminal offenses; and

(c) the collection of fines imposed as a sentence for a criminal offense.

ARTICLE 17

EXCLUSIVITY

1. Assistance and procedures set forth in this Treaty shall not prevent one Party from granting assistance to the other Party through the provisions of other international agreements or arrangements which may be applicable.

2. Subject to the terms of paragraph 1, a Party needing assistance as provided in Article 1 in the investigation, prosecution or suppression of a criminal offense as defined in Article 19 shall request assistance pursuant to this Treaty.

3. No Party shall enforce any compulsory measure, including a grand jury subpoena, for the production of documents located in the territory of the other Party with respect to any criminal offense within the scope of this Treaty, unless its obligations under the Treaty have first been fulfilled pursuant to paragraph 4 of this Article with respect to a request concerning those documents.

4. Where denial for a request or unreasonable delay in its execution may be jeopardizing the successful completion of an investigation, prosecution or other proceeding, the Central Authority of the Requesting Party shall so inform the Central Authority of the Requested Party in writing. Thereafter, either Contracting Party may

give at least 45 days' notice in writing to the other Contracting Party that, unless otherwise agreed, the Parties' obligations under this Article shall be deemed to have been fulfilled; provided that in no case shall the obligations under this Article be deemed to have been fulfilled sooner than 90 days after the date of receipt of the request for assistance.

ARTICLE 18

CONSULTATIONS

1. The Central Authorities will consult, at times mutually agreed by them, to enable the most effective use to be made of this Treaty. Such consultations shall include such information as may be lawfully disclosed concerning the status and disposition of proceedings utilizing documentary information and other evidence secured pursuant to this Treaty.

2. In any case of difficulty either Central Authority may request the assistance of the Contracting Parties to resolve the difficulty by way of consultation.

ARTICLE 19

DEFINITIONS

For the purpose of this Treaty:

1. "The Contracting Parties" means the Government of the United States and the Government of the United Kingdom.

2. "The Parties" means the Government of the United States and the Government of the Cayman Islands.

3. "Criminal offense" which, except in the case of any matter falling within sub-paragraphs (d) and (e) of this definition, does not include any conduct or matter which relates directly or indirectly to the regulation, imposition, calculation or collection of taxes, but subject always to those exclusions, means:

(a) Any conduct punishable by more than one year's imprisonment under the laws of both the Requesting and Requested Parties:

(b) "Racketeering" which means:

(i) the use or investment, directly or indirectly, knowingly by any person of any part of racketeering income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect commerce, including interstate or foreign commerce;

(ii) the acquisition or maintenance knowingly by any person through a pattern of racketeering activity or through collection of an unlawful debt, directly or indirectly, of any interest in or control of any enterprise which is engaged in, or the activities of which affect commerce, including interstate or foreign commerce; or

(iii) where any person is employed by or associated with any enterprise engaged in, or the activities of which affect commerce, including interstate or foreign commerce, the conduct or participation in the conduct, directly or indirectly, knowingly by that person of the affairs of the enter-

prise through a pattern of racketeering activity or collection of unlawful debt;
and in respect of which—

(A) "Racketeering income" means any income of any person derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal;

(B) "Racketeering activity" means unlawful gambling activity and the act or threat of any other criminal offense (which expression, for the avoidance of doubt, does not include any offense which relates directly or indirectly to the regulation including the imposition, calculation or collection of any tax) listed in this Article;

(C) "Pattern of racketeering activity" means at least two acts of racketeering activity, one of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(D) "Unlawful debt" means a debt:

(1) incurred or contracted in unlawful gambling activity or which is unenforceable in law in whole or in part as to principal or interest because of laws relating to usury; and

(2) which was incurred in connection with the business of gambling in violation of the law or the business of lending money or a thing of value at a rate usurious under law, where the usurious rate is at least twice the enforceable rate; and

(E) "Enterprise" includes any individual partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(*c*) "Narcotics trafficking" which means all offenses or ancillary civil or administrative proceedings taken by either of the Parties or their agencies connected with, arising from, related to, resulting from any narcotics activity covered by the Single Convention on Narcotic Drugs, 1961, or the Protocol Amending the Single Convention on Narcotics Drugs, 1961, or any other international agreements or arrangements binding upon both the Parties;

(*d*) Willfully or dishonestly obtaining money, property or valuable securities from other persons by means of false or fraudulent pretenses or statements, whether oral or written, regarding or affecting benefits available in connection with the laws and regulations relating to income or other taxes;

(*e*) Willfully or dishonestly making false statements whether oral or written, to government tax authorities (e.g., willfully or dishonestly submitting a false income tax return) with respect to any tax matter arising from the unlawful proceeds of any criminal offense covered by any other provision of this definition, except sub-paragraph (*f*), or willfully or dishonestly failing to make a report to government tax authorities as required

by law in respect of, or to pay the tax due on, any such unlawful proceeds;

(*f*) Willfully or dishonestly failing to make to the Government a report which is required by law to be made to it in respect of an international transfer of currency or other financial transactions connected with, arising from or related to the unlawful proceeds of any criminal offense falling within any provision of this Article, except this sub-paragraph or sub-paragraph (*e*) above;

(*g*) "Insider trading" which means the offer, purchase, or sale of securities by any person while in possession of material non-public information directly or indirectly relating to the securities offered, purchased, or sold, in breach of a legally binding duty of trust or confidence;

(*h*) Fraudulent securities practices, which means the use by any person willfully or dishonestly of any means, directly or indirectly, in connection with the offer, purchase or sale of any security:

(i) to employ any device, scheme, or artifice to defraud;

(ii) dishonestly to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or

(iii) dishonestly to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(*i*) "Foreign corrupt practices" which means the corrupt offering, paying, or making of inducements by any person to any foreign official or foreign political party, official thereof or candidate for foreign official office in order to assist such person in obtaining or retaining business for himself or in directing business to any other person;

(*j*) Any of the above defined criminal offenses, where United States federal jurisdiction is based upon interstate transport, use of the mails, telecommunications or other interstate facilities;

(*k*) Such further offenses as may from time to time be agreed upon by exchange of diplomatic notes between the United States and the United Kingdom, including the Cayman Islands; and

(*l*) Any attempt or conspiracy to commit, or participation as accessory after the fact to, any of the above defined criminal offenses.

ARTICLE 20

RATIFICATION, ENTRY INTO FORCE, AND TERMINATION

1. This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

3. The Government of either the United States or the United Kingdom, including the Cayman Islands, may terminate this

Treaty by giving three months' notice in writing to the other Government at any time.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Grand Cayman, Cayman Islands this third day of July, 1986.

For the Government of the United States of America.

Kenneth I. Juster

For the Government of the United Kingdom of Great Britain and Northern Ireland:

Tim Eggar

For the Government of the Cayman Islands:

Peter Lloyd

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FORM A

Affidavit With Respect to Documents of a Regularly Conducted Business Activity

Note. Affidavit must be executed by custodian of records or such other person who can explain the record keeping procedure

I ..... (Swear) (Affirm) (On Penalty of Perjury) (On My Oath) as follows:

(1) I am employed by .....

.....

(Name of business, activity, or person from whom documents are sought.)

(2) .....

(Name of business, activity, or person from whom documents are sought.)

engages in the regular business of .....

.....

(Describe business or activity.)

(3) My official title is .....

(4) My duties and responsibilities include: (describe relationship to books and records, i.e., custodian of books and records, or supervision over books and records, etc.).

(5) As a result of my duties and responsibilities I have knowledge of the manner in which the books ands records are kept.

(6) The attached documents are original (or true copies of original) documents which I obtained from the custody and control of .....

.....

(Name of business, activity, or person from which documents are sought.)

(7) The attached documents are: .....

.....

.....

(Description of documents: e.g., " Ledger of the checking account of John Doe for the Month of July, 1986 ".)

(8) It is a regular practice of this business to make and keep .....

.....

(Description of documents.)

in the following manner .....

(Describe manner in which documents or categories of documents are made and kept.)

(9) It is the regular practice of the business to base its records upon information transmitted by a person with knowledge of the matters recorded, who is acting in the course of the regularly conducted business activity.

(10) It is the regular practice of the business to check the correctness of documents of the kind attached hereto.

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(11) It is the regular practice of the business to rely on records of the kind attached hereto.

(12) The entries on the documents attached hereto were made by persons with knowledge of the matters recorded, or from information transmitted by persons with such knowledge.

(13) The persons making the entries on the documents or transmitting the information for purposes of recording it were acting in the course of the regularly conducted business or activity.

(14) The entries on these documents were made at or near the time of the matters recorded, pursuant to a systematic and routine procedure for the conduct of the business.

(15) The documents attached hereto were kept in the course of the regular activity of this business.

....

(Date) (Signature)

Sworn or Affirmed before me a .....

(notary public, judicial officer, etc.)

this.....day of.....19.....

FORM B

Attestation of Authenticity of Official Records

I, ..., attest that my position with the Government of .....
(the United States the United Kingdom Cayman Islands)
is ..... and that in that
(Official Title)
position I am authorized by the law of .....
(the United States/the United Kingdom/Cayman Islands)
..... to attest that the documents attached hereto and described below:

(1) Are true copies of original official records which are authorized by the law of .....
.....
(the United States/the United Kingdom/Cayman Islands)
to be recorded or filed in .....
(Name of Public Office or Agency)
which is a public office or agency.

(2) Set forth matters which are required by the law of the .....
.....
(the United States/the United Kingdom/Cayman Islands)
to be recorded or filed and reported.

Description of Documents:

.....
(Signature)

.....
(Date)